



# Making Blackness, Making Policy

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## Making Blackness, Making Policy

### Abstract

Too often the acknowledgment that race is a social construction ignores exactly how this construction occurs. By illuminating the way in which the category of blackness and black individuals are made, we can better see how race matters in America. Antidiscrimination policy, social science research, and the state's support of its citizens can all be improved by an accurate and concrete definition of blackness.

*Making Blackness, Making Policy* argues that blackness and black people are literally made rather than discovered. The social construction of blackness involves the naming of individuals as black, and the subsequent interaction between this naming and racial projects. The process of naming involves an intersubjective dialogue in which racial self-identification and ascription by others lead to a consensus on an individual's race. These third parties include an individual's community, the media, and, crucially, the state. Following Ian Hacking, this process is most properly termed the dynamic nominalism of blackness.

My dissertation uses analytic philosophy, qualitative and quantitative research, and historical analysis to defend this conception. The dynamic nominalist process is illustrated through the media's contribution to the making of Barack Obama's blackness, and the state's creation and maintenance of racial categories through law, policy, and enumeration.

I then argue that the state's dominant role in creating blackness, and the vital role that a

black identity plays in millions' sense of self, requires the United States Government to support a politics of recognition. The state's antidiscrimination efforts would also improve through the adoption of a dynamic nominalism of blackness. Replacing the Equal Employment Opportunities Commission's inconsistent and contradictory definitions of race with the dynamic nominalism of blackness would clarify when and how racial discrimination occurs.

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## **INTRODUCTION:**

### **MAKING BLACKNESS ACROSS DISCIPLINES**

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Black people in America are not born. They are made. Blackness and black Americans are not out there to be discovered. Instead, they are literally created through a social process involving an intersubjective dialogue, racial naming, and the triggering of racialized effects.

While there is general agreement that race is a social construction, it matters exactly *how* race is constructed. This dissertation is a conceptual and critical project meant to illuminate the way in which blackness is (re)created in the United States, and comes to matter to both black people and the state. It offers a new, and hopefully compelling, account of American blackness, most properly termed the dynamic nominalism of blackness. If accepted, this account would significantly impact social science research, the state's antidiscrimination efforts, and the level to which government is normatively responsible for recognizing blackness.

To make the case for dynamic nominalism and its relevance to public policy and social science research, the project takes full advantage of African American Studies' interdisciplinary nature. Methods, evidence, and arguments are culled from analytic philosophy, black history, quantitative and qualitative social science research, political theory, and even black literature. The complementary use of philosophy and social science research has previously been put to strong effect by philosophers incorporating social science data and quantitative political scientists heavily engaging with political theory. But the philosophy of race has been largely disconnected from the study of race in American politics. Philosophers defining blackness make

little more than passing reference to social science data, referring instead to anecdotes and thought experiments. And quantitative social scientists studying race rarely consider what it is that makes an individual black. At the very least, the wall between social scientific and theoretical treatments of race is rarely climbed. The combined disciplines allow me insight into blackness and race-related policy not possible through traditional philosophy or political science alone.

I begin this project with the use philosophical argument, clarified through African American memoir and literature, to defend my theory of blackness against competing conceptions of race. I then use historical evidence and available quantitative social science data, as well as a new empirical study, to illuminate, defend, and refine the philosophical conception. While philosophers of race provide many (contested) definitions, several of which could provide greater insight into certain race-centric phenomena, I argue that my conception better comports with the reality of how race is socially constructed. The dynamic nominalism of blackness – consisting primarily of an intersubjective dialogue that names individuals as black and subsequently makes this blackness matter – is both the most accurate and the most effective way to describe the way in which race and raced individuals are created in the United States. And the use of history and social science data allows me to show the philosophical conception in action.

The interdisciplinary project continues, as I combine my philosophical conception of blackness with original and available social science data, and a unique reading of the state's role in creating blackness. I argue that this role, when seen alongside the centrality of black identity, should cause the United States to engage in a “politics of recognition.” While most similar argument do little more than assert and demonstrate philosophically that various identities are



necessary to a sense of self, I collect available empirical evidence that blackness serves as a hypergood anchoring identity. This leads into a discussion of the Equal Employment Opportunities Commission and its many conflicting definitions of race. The argument is meant to illuminate and critique public policy by incorporating the process by which blackness and black people are made into an analysis of antidiscrimination policy.

While the dissertation first addresses philosophers of race, both social scientists and policymakers would greatly benefit from a more concise and correct definition of blackness. Much social science research on race is built on inaccurate conceptions of what blackness is. Black people are treated as the paradigmatic minority, with blackness seen as one of a variable number of races. Race is often conflated with ethnicity, either purposefully or due to conceptual slippage. Political science research on race typically focuses on the impact that race has rather than on what it is, ignoring – at the same time it takes for granted – the meaning of blackness. The number and “type” of black people, for example, are taken as a given, with self-identification or available demographic data simply accepted. Quantitative political scientists instead tend to treat blackness as an empty variable, attempting to isolate the effects of race, often through regression analysis. The process that creates blackness is given no independent weight.

On balance, this leaves social scientists somewhat blind to the important independent ways in which the making of blackness determines the number of black people, defines identities, and activates racial projects. Complicating factors that would skew results are unseen. For instance, the 1-5% disagreement between those self-identifying as black and the assessment of their blackness by third parties affects any study that takes the size of a black population as a

given. And nearly all opinion surveys rely on racial self-identification when a majority of black people report that their racial self-identification is context-dependent. Dynamic nominalism can account for changing and contested self-identifications by illuminating actual moments of race creation. A focus on the making of blackness and black people will also complicate the analysis of whether “race matters” in a certain situation.

Policymakers will similarly be helped by considering the dynamic nominalism of blackness. Like many social scientists, the United States Government has largely taken race and minority status for granted. The greatest discussions of race – surrounding the Constitutional Convention and the Civil Rights Movement, for example – addressed only how to contend with members of unchallenged racial groups, and did not consider the construction or validity of these categories. And, as we'll see, federal agencies currently lack of a consistent and coherent definition of either race or minority status.

An accurate and concise definition of race would help to clarify how black people are made and discriminated against. This would lead to improved policies targeting racial inequality, most directly through altered notions of racial minority status and improved recognition of discrimination. More, by focusing on the process that makes blackness as a category and black people as individuals, policymakers better understand the states' dominant role in that process, and the resultant normative demands surrounding enumeration, enforcement, and identity-protection.

## **Chapter Outline**

Chapter One argues for a new social constructionist definition of blackness in the United

States. It is based on naming through intersubjective dialogue, and the import of that naming's interaction with the world. I will fully explain and defend this philosophical conception, which I believe most accurately reflects reality, and which elucidates what is often missed in social science research on race: what blackness *is*, and the internal and external processes that create it. I will attempt to show that this is the best conception of race through a detailed philosophical defense, comparing dynamic nominalism to prominent competing theories of race, including those revolving around self-identification and the application of rules.

The following chapter will provide a social scientific defense for the largely philosophical claims of the first chapter. Unlike other philosophical defenses of theories of race, I turn to actual empirical evidence to demonstrate my definition of blackness. I largely focus on media discussions of Barack Obama's blackness as the defining example. Through coding and content analysis, I show that Obama's blackness within a national context was literally created through the dynamic nominalist process, constrained but not determined by America's agreed upon rules for determining race.

The third chapter will build upon the concept of blackness defended in Chapter One. It provides another demonstration of dynamic nominalism in action – this time focusing on dialogue between the individual and the state rather than the media. I offer a unique reading of the way in which government makes race, demonstrating the state's role in the making of blackness through law and policy. Focusing on historical analysis, and the impact of the Census and similar sites of racial data collection, the chapter shows the dominant role that the American Government has held in the intersubjective dialogue that makes blackness. I show that the state plays a crucial role in creating the categories into which raced people are created, making those

categories matter for lifechances, and providing sites at which the intersubjective dialogue of dynamic nominalism actually occur.

The chapter simultaneously explores the large role that this process plays in the lives and sense of self of black people. It will show the importance of a (semi-)permanent identity, as well as provide a theoretical and empirical defense showing that blackness is such an identity.

Essentially, I will argue that a recognizable, psychologically-healthy individual requires a sense of self anchored by such an identity. And further, blackness as I've described is that identity for millions of Americans. Without this, the individual is unrecognizable to herself and to others, and thus cannot enjoy the psychological and practical benefits that modern (and postmodern) society affords to individuals. Blackness, I will argue, acts as a hypergood, providing a permanent base from which one can understand the world and one's place in it. As my conception of blackness focuses on process rather than the cultural content of an identity, the defense is freed from the culturally-limiting aspects of similar arguments. And unlike similar arguments for the importance of racial/ethnic identity, I utilize available empirical evidence to show that a black identity actually matters in a vital way.

I claim that these two arguments together – the importance to self-respect and self-conception of blackness created through dynamic nominalism, combined with the state's crucial role in this process – creates a normative responsibility which demands that the United States Government “recognize” blackness. I will deal directly with critiques of similar arguments, chiefly those against recognition-seeking. In addition, I will discuss some of the additional benefits that the existence of a black identity provides to all US citizens.

Chapter Four will look at how incorporating a more concrete conception of blackness

would affect the way in which policymakers and government agencies combat racial discrimination. I focus on the definitions and decisions of the Equal Enforcement Opportunities Commission (EEOC) due to its key role in fighting anti-black discrimination and its historical import in how the US Government defines minority status. The chapter provides the first full accounting of the ways in which the EEOC defines race and blackness, detailing the discrepancies in dealing with complainants, employers, and other federal agencies. The discussion demonstrates how the jumble of competing definitions used, combined with the state's positions on the meanings of race and racism, cloud antidiscrimination efforts. I look specifically at the agency's use of color-blindness, color discrimination, and a disparate impact standard likely influences the rate and outcome of racial discrimination complaints. I use this to discuss how adopting a definition of blackness akin to dynamic nominalism would likely affect the EEOC's antidiscrimination efforts.

# CHAPTER ONE:

## THE DYNAMIC NOMINALISM OF BLACKNESS

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### Introduction

Perhaps there are no races; but there certainly are black people. These are individuals identifying and/or being identified as black, who live in a world in which this matters. The crucial question, then, is not whether races are “real,” but rather who is black, how they become so, and how that blackness matters. I argue that blackness – or, more precisely, *black people* – in the United States stems from a complex form of naming and its attendant effects, most properly described as *the dynamic nominalism of blackness*. In this chapter and the next, I will outline the dynamic nominalism of blackness, contrast the conception with similar social constructivist and anti-essentialist views, and argue that it is more accurate and useful than competing philosophical conceptions of race and blackness. While Chapter One is largely theoretical and descriptive, Chapter Two will provide an empirical defense of the concept.

### Dynamic Nominalism as Social Construction

My theory of the dynamic nominalism of blackness fits squarely into the social constructionist tradition. As Paul Boghossian (2001) summarizes in his article, “What is Social Construction?”

To say of something that it is socially constructed is to emphasize its dependence on contingent aspects of our social selves. It is to say: This thing could not have existed had we not built it; and we need not have built it at all, at least not in its present form. Had we been a different kind of society, had we had different needs, values, or interests, we might well have built a different kind of thing, or built this one differently. The inevitable contrast is with a naturally existing object, something that exists independently of us and

which we did not have a hand in shaping. It is not only things, however, that are socially constructed, but ideas as well. Ian Hacking's *The Social Construction of What?* (2000) demonstrates that “social construction talk is often applied not only to worldly items – things, kinds and facts – but to our *beliefs* about them.”.

Social constructionism has taken hold in both the hard and social sciences, though “most philosophical discussion of social constructionism has been concerned with the so-called 'science wars' which means that they have been concerned with evaluating the inference from the numerous and complex social influences operating in the production of scientific theories to the social construction of the facts those theories purport to represent, or to the failure of accounts of scientific rationality, or scientific realism, or scientific process” (Mallon 2007). The possibility of social construction is no longer philosophically controversial in most disciplines; debates center only on the specific empirical claims regarding each thing, kind, fact, or belief (Boghossian 2001).

Race theorists have done excellent work demonstrating that race is extremely likely to be a social construction, or at least not a biological fact. As Boghossian notes, Kwame Anthony Appiah (1985) and others have “been particularly forceful in demonstrating that nothing physical or biological corresponds to the racial categories that play a pervasive role in our social lives, that these categories owe their existence more to their social function than they do to the scientific evidence.” According to Ron Mallon (2006, 5), “the rejection of racialism is now nearly universal among academic racial theorists,” sufficient to have created an “ontological consensus” that nearly all philosophers of race take for granted.

As we will see, then, the debate within the philosophy of race is only somewhat about whether race is a social construction, and is instead predominately about what sort of social construction it is. Through both traditional philosophical argument and empirical investigation,

we can determine the variety of social construction that makes blackness, and even observe it occurring. I argue that, on the evidence of both of these methods, dynamic nominalism is the best description and explanation.

My version of the dynamic nominalism of blackness is akin to Hacking's original conception and use of the term. Hacking coined the phrase to describe the process by which a name or category is developed and in turn begins to create a social reality around itself. It is a unique form of social constructionism, one which attempts to describe the actual process of construction.

Hacking cites Friedrich Nietzsche as the first precedent for dynamic nominalist theories, pointing to an aphorism in the *Gay Science* (1882) which reads, "There is something that causes me the greatest difficulty, and continues to do so without relief: unspeakably more depends on what things are called than on what they are... creating new names and assessments and apparent truths is enough to create new 'things'." While Nietzsche is concerned with "things," Hacking (YEAR) and I are concerned with the how the process occurs with regard to human identity, the "special case of this phenomenon" that involves "making up people". The diagnosis of multiple personality disorder, and the groups and treatments that sprang up around it, is the paradigmatic example.

Hacking describes a phenomenon by which people with multiple personality disorder were literally created rather than simply diagnosed. Hacking writes of discovering how, around 1970,

A few psychiatrists began to diagnose multiple personality. It was rather sensational. More and more unhappy people started manifesting these symptoms. At first they had the symptoms they were expected to have. But then they became more and more bizarre. First a person had two or three personalities. Within a decade the mean number was 17. This fed back into the diagnoses, and became part of the standard set of symptoms. It became part of the therapy to elicit more and more alters. The psychiatrists cast around for causes, and created a primitive, easily understood pseudo-Freudian aetiology of early sexual abuse, coupled with repressed memories. Knowing this was the cause, patients obligingly retrieved the memories. More than that: this became a way to be



a person (Hacking 2006).

According to Hacking (2006), “A wholly new kind of person came into being, the multiple, with a set of memories and a set of behaviours.” People with multiple personality were not simply out there waiting to be discovered. Instead, they were made through an intersubjective process of diagnostic naming, self-identification, and treatment.

Hacking has identified a five-part framework for telling this story of how people with multiple personality, and in turn all socially constructed kinds, come into being. These five elements are 1) classification, or “the *kind* of person,” 2) people to plausibly fit the classification, 3) institutions, from governments to the media, 4) knowledge, primarily, “the presumptions that are taught, disseminated, refined, within the context of the institution,” and 5) experts who study, generate, and judge knowledge. In this chapter and the next, I focus on the first two parts of that framework – classification and people – to argue that this dynamic nominalist process creates black people in a process analogous to that which created people with multiple personality disorder. The dynamic nominalism of blackness, then, is the naming of the individual or group as black and the attendant internal and external thoughts, actions, and racial projects that spring up around it. (While the term is essentially the same, this is *not* dynamic nominalism in the sense in which Robert Gooding-Williams (1998) employs the phrase, where the dynamism is the individual’s self-identification with blackness – and her agency in part determined by that self-identification – in response to a third-party ascription of blackness.)

### **The Dynamic Nominalist Construction of Blackness**

Black people, then, are made, not born. And dynamic nominalism, the naming of individuals as black within the five-part framework, is how they are created. In essence, one becomes black when she is named as black at the end of an intersubjective dialogue, and this

naming then comes to matter. The nominalist element encompasses that intersubjective dialogue and forged consensus, and can occur nearly instantaneously, or require great time, debate, and evidence. And the dynamism revolves around the way in which this naming interacts with those named. This dynamic aspect, making the intersubjective agreement matter, is what gives blackness its real world meaning. To black individuals, it provides, among other things, opportunities to claim inheritance of a cultural heritage, the ability create and maintain a sustaining identity, the information necessary to identify likely allies, a lens through which to interpret interactions with both blacks and non-blacks, and a heuristic through which to more easily understand needs and preference. As James Weldon Johnson (1912) writes, blackness, “is the dwarfing, warping, distorting influence which operates upon each and every coloured man in the United States. He is forced to take his outlook on all things, not from the view-point of a citizen, or a man, or even a human being, but from the view-point of a *coloured* man. It is wonderful to me that the race has progressed so broadly as it has, since most of its thought and all of its activity must run through the narrow neck of this one funnel.”

At the same time, it provides non-blacks with the cue to implement the sorts of racial projects described by Michael Omi and Howard Winant (1986). It is the existence of an intersubjectively-created racial label ascribed to an individual that allows racists to discriminate, and that activates latent prejudices. Adrian Piper (1992), for instance, recounts telling academic colleagues of her blackness, explaining, “Sometimes this revelation would elicit a response of the most twisted and punitive sort: for example, from the colleague who glared at me and hissed, ‘Oh, so you want to be black, do you? Good! Then we’ll treat you like one!’” (22). Only knowledge of her racial ascription allowed for the “appropriate” treatment. But more positively, it also allows the federal government to identify and stamp out racial discrimination. While this

chapter and the next focus on the intersubjective dialogue, we will discuss these attendant effects further in Chapter Four, analyzing how the way in which blackness is defined and understood will impact the state's antidiscrimination efforts.

The traditional political science language of labeling is insufficient for describing this naming, partially because it misses the dynamism, implying that the labeling in and of itself is what matters, and not the real world implications of that labeling and the label's interaction with labeled individuals. More, “labeling” does not differentiate between the various forms of nominalism – referential, ideational, etc. – which can disagree even on the existence of race and blackness. Additionally, and crucially, it obscures the intersubjectivity inherent in both determining the rules of naming and, more importantly, in the applying of those rules to individuals.

This final point is seen clearly in the distinction between my dynamic nominalism of blackness and the role of labeling and attendant treatment Appiah (2001) sees in blackness. In his series of Tanner Lectures entitled, “The State and The Shaping of Identity,” Appiah argues that an identity (an “L” in Appiah's general case) such as blackness has three crucial elements. The first is the “social conception” of that identity: that a group of Ls exists. The second is individuals identifying as an L, conceiving of oneself, “as an L in ways that make a difference.” And finally, there must then be, “patterns of behavior toward Ls, so that Ls are sometimes *treated as Ls*” (243). In sum, “Where a classification of people by the members of a society as Ls is associated with a *social conception* of Ls, some people *identify as Ls*, and people are sometimes *treated as Ls*, we have a paradigm of a social identity that matters for ethical and political life” (244).

While many of the same parts exist in Appiah's conception as in my own – naming

followed by treatment creating identities – the complex interplay is missing – or at least not seen as crucial. Appiah seems to subsume the ascription by others – the being named rather than naming oneself – into “treatment”. This not only implicitly privileges self-identification, but the intersubjective process – the dialogue between namer and named – becomes irrelevant. Appiah's conception is thus more akin to traditional nominalism, in which Hacking says the labeling is “wholly static”. Appiah leaves the process of labeling, relabeling and forming a consensus on that label unexplored. My adoption of Hacking, in contrast, acknowledges the complex interplay of intersubjective dialogue, and so, “is dynamic, for I am interested in how names interact with the named” (Hacking 2006). And as Hacking has shown in other cases, and I will attempt to show empirically in Chapter Two, that dialogue is crucial.

In Hacking's use, the “banal framework of five elements” listed above – consisting of classification, people, institutions, knowledge, and experts – determines when and how names exist and are applied. Because the relative import of each of these categories varies across dialogues, “There is ‘no reason to suppose that we shall ever tell two identical stories of two different instances of making up people’. The banal is required to eliminate the idea that the interactions involve only the name and the people named, or the classification and the people classified” (Hacking ). The interactions of these five elements explain why the dynamic nominalist construction is different for different socially constructed kinds. And it is another reason why it is insufficient to conflate nominalism with labeling, as Appiah and others essentially do.

### **Group- and Individual-Level Dynamic Nominalism**

The dynamic nominalism of blackness can be examined on both the level of the group and the individual. On the group level, “Sometimes our sciences create kinds of people that in a

certain sense did not exist before. That is making up people” (Hacking 1996). On this level, we have the making of blackness and black people as a group. Blackness here looks much like Sally Haslanger’s (2000) definition of race, where, “A group is *racialized* iff its members are socially positioned as subordinate or privileged along some dimension – economic, political, legal, social, etc. – and the group is 'marked' as a target for this treatment by observed or imagined bodily features presumed to be evidence of ancestral links to a certain geographical region.”

While most philosophers of race become stuck on this group level, detailing the moment of creation for black people as a “racial” group in the United States is beyond the scope of this project. Much of the initial creation is lost to history, although texts such as Edmund Morgan’s *American Slavery, American Freedom* (1975) likely point the way. But there is certainly evidence of racial group recreation, and of creation in new contexts, that are less opaque. While the processes are often extremely complex, their key moments also often involve the act of naming. John Skrentny’s *Minority Rights Revolution* (2002), for example, details the creation and dissolving of racial groups through their naming as such by the United States Government. And in his genealogy of modern racism, Cornel West (1982) demonstrates how the Enlightenment desire to name and categorize was indispensable for the existence of both races and racism.

I am more interested in the process of naming on the level of the individual. While others' focus tends to be on the entire category of blackness, and the way that category becomes a real thing in the world and only then affects its constituents, I am interested in the way that *each individual* is named black and the dynamic work that this name does. This is the more micro-level event. Its analogue in Hacking’s original conception would be the diagnosis of

multiple personality disorder in an individual and the way that diagnosis affects his life and sense of self. Contrast this with the creation of multiple personality disorder as a disorder to be diagnosed, along with the way in which the diagnostic category affects treatments, communities, and individual diagnoses. This micro-level of dynamic nominalism is almost wholly ignored, and not only in race making. And so I'd like to explore the occasion of naming, and thus creating, the black individual rather than the category of blackness.

### **Making Black People**

While defending this argument that blackness and black people are made through an intersubjective dialogue, it is concurrently necessary to simply show that black people can be made at all. The American common sense view of blackness eschews the possibility of making black individuals, instead skewing toward either pure self-identification or the application of rules for identifying and discovering blackness. And so it is important to show that blackness is made and not discovered.

America's colloquial understanding of blackness rests on the belief that an individual's race can be determined with reference to a set of rules. The rules, typically involving phenotype and descent, imply a "correct" racial naming that can at most be discovered. Individuals are always either black or not according to socially constructed rules, and only our knowledge of the facts or the society's choice of rules can change. Even the strongest anti-essentialist arguments on what makes blackness treat race as something "out there", discoverable through an appropriate set of rules. Charles Mills's (1998, Ch. 2) thought experiments on ten difficult cases of racial categorization, for example, are designed primarily to discover whether seven plausible bases for racial naming – bodily appearance, ancestry, self-awareness of ancestry, public awareness of

ancestry, culture, experience, and subjective identification – can be consistently accurate rules for discovering blackness. And Piper (1990) sees individuals as always black or not, with only the discovery that the individual fits our rules of blackness necessary to make that blackness matter.

Because of this reliance on rules, however, when they and others search for the rules of blackness, they do not find blackness itself, but rather the societal constraints on naming individuals as black. These rules limit the intersubjective dialogue within dynamic nominalism, but they are not themselves the rules of race. Perhaps this distinction is missed largely because the actual moment of creating a black individual is nearly always the moment in which an individual and third parties come to understand that the individual fits the rules of blackness. The final racial naming, however, is an intersubjective decision as to whether the rules of blackness should apply; but it is not the simple application of rules.

A consistent racial constructionist simply should not make a distinction between intersubjective understanding and being, between our knowledge of someone as black and them being black. Social constructionists such as Rorty make sure to distance themselves from saying, for instance, that mountains do not exist unless we are talking about them. Boghossian similarly critiques Andrew Pickering's *Constructing Quarks* (1984), which claims that “the reality of quarks was the upshot of particle physicists’ practice,” quarks literally nonexistent until scientists spoke of them. But I think that this is exactly how we should talk when we talk about blackness. The intersubjective decision that an individual is black and will be treated based on that naming literally makes a black person who did not previously exist. This is creation rather than discovery.

In her autobiographical short essay “How It Feels to Be Colored Me,” Zora Neale

Hurston (1928) provides a succinct example of what the making of a black person might mean. Hurston writes, “I remember the very day that I became colored.” Having lived in an all-black town, neither she nor others ever had occasion to name her as black, as the town’s racial uniformity made race a largely irrelevant internal distinction. When Hurston left Eatonville for the racially-mixed Jacksonville, “I was not Zora of Orange County any more, I was now a little colored girl.” Hurston rightly saw her blackness not as discovered, but as made. While Hurston's anecdote is merely illustrative, philosophical investigation shows that the making of black people – and making them specifically through an intersubjective dialogue – is more plausible than either the common sense view, or other competing social constructivist views of race. Perhaps the clearest evidence of this is seen through reflection on what I will call the unconscious passer.

An unconscious passer is an individual who meets America’s rules of blackness although this fact is unknown to everyone, including the individual herself. Now, imagine the unconscious passer becomes conscious that she is passing, discovering to the surprise of even her family, that she properly meets the rules of blackness. She then begins to self-identify as black, sharing this new-found knowledge and self-identification with her friends, family and co-workers. At this point, it seems patently obvious that this individual is black.

The main character in Sinclair Lewis’s *Kingsblood Royal* (1947) demonstrates this well. The protagonist is an unconscious passer, as he and everyone he knows identify him as white. But by chance he learns of a black ancestry unknown even to his parents. His every thought then turns to what his “blood” means for his intelligence, his body (even searching his nails for “telltale halfmoons”), his ability to maintain the charade of passing, his personal preferences, and his relationship choices. He is effectively black almost immediately, even self-identifying as such, even if no one else knew. While the fictional character allows us to examine a cleaner



example, unconscious passers becoming conscious of their ancestry certainly occurs. Among the prominent unconscious passers who have become conscious of their passing is Bliss Broyard, who unconsciously passed as white until shortly before her father Anatole Broyard's death (Gates 1997, 185). And as a result of interracial intimacies, as well as widespread sexual assault during slavery, millions of Americans living as white unknowingly possess “black” ancestry, though nearly all will “unconsciously pass” their entire lives.

On the surface, the unconscious passer becoming conscious appears to present a paradox. This certainly-black individual was at one time *correctly* described as non-black. Whether through an application of rules via known facts or self-identification, he *was* white. The very simple resolution is that this individual *became black*. This might sound ludicrous to those socialized into America’s biological essentialist notions of race, but an intersubjective, experiential constructivism has no trouble with such a shift. It is entirely plausible, however rare, for an individual to go from white to black, or vice versa. The knowledge gained by the unconscious passer is simply a first moment in the making of her blackness.

Rather than finding that we have been “wrong” about an individual's race, we have actually seen the creation a black person. Clearly, this contradicts the current colloquial understanding of race, as well as the dominant theories of blackness. Mallon (2007) typifies this position, using the analogy of a baseball game to explain Mills’s position that we can be mistaken about one’s race. The arbitrary rules of blackness in America, he says, have created an objective category into which we can correctly and incorrectly place individuals. Mallon asks us to “consider the rules of baseball. The rules of baseball determine a batter’s strike zone, and thereby determine, for a given pitch, whether that pitch is a strike. It’s because we recognize the rules as determining an objective fact about strikes that we can say things like ‘the umpire made

a bad call'. Mills's suggestion is that we can make sense of a community being mistaken about a person's race just as we make sense of a strike in baseball—by reference to the antecedently agreed upon criteria that the community was attempting to apply.” What Mallon fails to realize is that saying something akin to “the umpire made a bad call” does not mean that the pitch was not a strike. Certainly this is a misapplication of agreed upon rules, but in the context of the game, the pitch is indeed a strike, no matter whether it passed through the strike zone. A strike is added to the count, and the pitcher, batter and both teams must act with the strike in mind. Mallon fails to realize that it is not the rules that “determine, for a given pitch, whether a pitch is a strike,” but rather the umpire's application of those rules.

Something similar holds true for blackness. An individual is indeed black when called so, even if our set of rules seemingly should not apply, as long as the individual is named black and the dynamic consequences are triggered. While there is no singular authority, or umpire, in the determination of blackness, those in the intersubjective discussion of individual and group race similarly arbitrate. Of course, individuals and small groups can plausibly be mistaken about another individual's race, or even his or her own. Misperception, a lack of knowledge about another's ancestry, a surprising self-identification, etc., can leave one's assessment at odds with the intersubjective consensus of someone's race. But it is not possible for *everyone* to be mistaken. If everyone misapplies the rules – the consensus following dialogue is “wrong” - then that misapplication is simply the individual's race.

This works in the opposite direction, as well. A significant percentage of “white” individuals in the United States have black ancestors. Genealogical and biological estimates vary from 2% to nearly 20% of white Americans having “some genes from black ancestors” (Davis 1991). Our concept of the rules, especially hypodescent, should cause us to think that all of these

people are black. But there seems no desire and certainly no commitment to suddenly “correct” ourselves. In fact, according to Piper (1992, 20), “Among politically committed and enlightened whites, the inability to acknowledge their probably African ancestry is the last outpost of racism.” The consensus is that these individuals are still white, regardless of what the rules say.

On the macro level, it is even possible that black people colloquially understood as a racial group might altogether disappear. Numerous groups that were once racialized as non-white within American society have now joined the white race. It logically follows that individuals in those extinct races had their own races changed as well. Remember, Robert Dahl’s (1961) surprise was not that Italian, Polish and Jewish immigrants shed their racial group status, but rather that African Americans had not, seemingly stuck at the second stage of assimilation.

### **Alternate Perspectives on the Unconscious Passer**

While the dynamic nominalism of blackness makes quick work of the unconscious passer, competing social constructivist notions of race have much more difficulty. Mills, for example, does not even take a stand on whether the unconscious passer is already black. He instead identifies this as one of his ten difficult cases in which even careful thought does not provide a clear answer. Piper does not explicitly discuss with the unconscious passer. She would, however, likely disagree with my reading, and proclaim that the unconscious passer was black his entire life, but only now is he no longer mistaken about it. Yes, these individuals could have cognitively been understood as black prior to these creative moments. But it matters that they were not. To make such an argument would be to equate a second-order cognitive possibility – that we can understand that someone could have understood them as black, even though they did not – with the lived experience of blackness in America. To do so, and to think that this is

enough to make one black, is an enormous stretch. And it helps to further undercut the entire discussion of being mistaken about people's races.

Contra Mills, Mallon (2004) considers the unconscious passer to be paradigmatically black, and portrays the situation as fatally undercutting constructivism. According to this "Passing Constraint," the acceptance of the unconscious passer as black undercuts an experiential account of race, and constructivism most prominently. The argument runs, "An experiential account of race would allow for passing only in the cases in which a person has experienced being classified as a member of one category, but chooses for a time to pass as a member of another. Insofar as the ordinary notion of race and passing recognizes a distinction between one's racially marked experiences and one's race, the experiential constructionist account falls short of an illuminating explanation of paradigm cases." And Mallon would be correct, were the individual he identifies paradigmatically black, or even black at all.

That Mallon overstates the case should be obvious in Mills's categorization of the unconscious passer as an inordinately ambiguous case. Appiah takes this much further, stating, "It is also part of the social conception of African-American identity that there of some people of African-American ancestry who were raised as white people, not knowing of their African ancestry; who look like other white people and thus have the skin-privilege associated with whiteness; and are, as a result, not really African-American". But the key is that black people as a group are simply not wedded to this individual as black, as both theoretical and empirical analyses indicate. As Lionel McPherson and Tommie Shelby (2004) show through a thought experiment, black people are much more committed to the maintenance of racial political solidarity than to the notion of hypodescent required to make unconscious passers paradigmatically black. And, as we saw above, genealogical and genetic investigations have

demonstrated that millions of “white” people have black ancestry. While Mallon would see this inchoate group of unconscious passers as paradigmatically black, there has been no public rush to name them so.

More than refute Mallon’s critique of constructivism, this discussion of the unconscious passer should further warn us off of a mechanical use of rules to determine blackness. The unconscious passer obviously meets Piper’s rules for determining blackness; namely, if we had all relevant information, we would consider the passer black. And yet, both thought experiments and historical analysis show that an individual meeting unconscious passing criteria from birth to death is not black in any meaningful way. We can resolve this tension by realizing that blackness is not simply a heuristic under which each individual can be correctly (and perhaps incorrectly) placed, but that “correct” determinations of race should be replaced by descriptions of the intersubjective agreement.

When presented with the unconscious passer, Gooding-Williams’s response would likely come closest to acknowledging the making of blackness. Gooding-Williams would likely respond that the unconscious passer was previously only “black”, but just now has become a “black person”. He dances around the idea of race creation when introducing his own distinction between blackness and black people, as one can be “black” through the sort of third-party ascription Piper describes, but only becomes a “black person” when consciously accepting and subsequently acting upon that ascription. While Gooding-Williams is obviously attempting to rescue some level of agency, there is no practical distinction between understanding that the world has marked you black and thus acting accordingly, and accepting that you are black and acting upon that self-identification. This is why Judith Butler (2001) can rightly ask, “What does the ‘identification’ (the identifying process) actually consist of in Gooding-Williams?’ Whatever

it might consist of, it is no different from understanding oneself to be (plausibly) raced as black.” But Gooding-Williams motions in the proper direction, as his argument implies that while one is always black, but might *become* (or even stop being) a black person. By collapsing Gooding-Williams's ascription and self-identification into what they really are – an intersubjective nominalism – we see that it is in fact possible for one to become (or even stop being) black. Where Gooding-Williams is making a political distinction, he should be making a descriptive one.

### **A Closer Look at the Intersubjective Dialogue**

In Gooding-Williams's theory, one becomes a black person – as opposed to black – once that individual begins to act upon the ascription and makes life choices while considering it. But while this formulation is optimistically agentic, there seems no reason that the import of blackness in one's life can, should be, or, most importantly, *is* so neatly divided between individual choice and third-party action. The dynamism is not simply that “the individual begins to make choices, to formulate plans, to express concerns, etc., in light of *one's identification of oneself as black*,” (23) [emphasis added] but when the individual *and* society do so, often in conjunction. Self-identification is typically just one aspect of the intersubjective process of dynamic naming. The dialogue ending in racial consensus exists across a spectrum, with ends marking pure third-party ascription and pure voluntarism – both representing largely univocal race creation/destruction – and an extensive, democratic dialogue at the center.

To be clear, even in an intersubjective dialogue, it is not guaranteed that each (or all) side(s) contributes equally to the communal understanding and naming of a people or object. Intersubjectivity does not imply equal input between third-party ascription and individual self-

identification. For example, asymmetrical power gives unequal and perhaps excessive weight to third-party ascription – whether that means non-black individuals, non-blacks as a group, or other black people as a group. James Davis (1991) cites “race clerks” in Louisiana, who zealously searched for white families with “questionable racial purity,” unilaterally changing birth certificates in the face of birth certificates, family testimony, and church records, until stopped by the courts in 1977. Claudia Card (1999), who actually posits a competition between self-identification and identification by others, argues that the latter is what usually “matters,” meaning that it leads to the impact of racial designations. Even if a White Anglo Saxon Protestant woman chooses one day to vacate her WASP identity, she still remains a WASP for nearly all intents and purposes. And even Naomi Zack (1997), who primarily promotes the voluntarist, self-identification aspect of racial intersubjectivity, calls this self-naming an “existential *fiction*.” [Emphasis added].

This end of the spectrum represents the most one-sided intersubjective possibility for creating race, and unfortunately often dominates America's creation of blackness. Akin to Louis Althusser's (1971) interpellation, an individual, as a raced being, is literally called into being, with little or no recourse. The black person is made in the moment in which he is named such. Nowhere is this clearer than in Frantz Fanon's (1952) famous opening to the fifth chapter of *Black Skin, White Masks*: “‘Dirty Nigger!’ Or simply, ‘Look a Negro.’” Before that moment, Fanon implies, he was a person; after, he was a black person. His blackness was not discovered, but made, as “the movements, the attitudes, the glances of others fixed me there, in the sense in which a chemical solution is fixed by a dye. I was indignant; I demanded an explanation. Nothing happened. I burst apart. Now the fragments have been put together again by another self. I am given no chance. I am overdetermined from without. I am the slave not of the ‘idea that

other have of me but by my own appearance.” (116) It was this interpellation that made him black – the shouts and epithets filling his blank canvas with a black dye – and there was nothing he could immediately do to make himself otherwise. He would have to, at least at first, completely accept it.

And this sort of interpellative race creation dominates African American autobiography and literature, which alternately provide anecdotal evidence and clear illustrations of what the dynamic nominalism of blackness actually looks like. In *Souls of Black Folk*, for instance, W.E.B. Du Bois (1903) describes a school greeting card exchange through which he came to realize – I believe embody – his blackness. “The exchange,” he writes, “was merry, till one girl, a tall newcomer, refused my card, - refused it peremptorily, with a glance. Then it dawned upon me with a certain suddenness that I was different from the others; or like, mayhap, in heart and life and longing, but shut out from their world by a vast veil.” (214) This peremptory naming, literally “putting an end to or precluding a right of action, debate, or delay,” started and finished the discussion of Du Bois’s blackness.

Similarly, Johnson’s nameless narrator in *Autobiography of an Ex-Colored Man* does not just learn of his blackness, but explicitly passes into a new world created by his new race. In the pivotal scene, mirrored in Fannie Hurst’s novel *Imitation of Life* (1933) and its two film adaptations, the narrator, a phenotypically white unconscious passer, is named as black by a white authority figure.

One day near the end of my second term at the school the principal came into our room and, after talking to the teacher, for some reason said: ‘I wish all of the white scholars to stand for a moment.’ I rose with the others. The teacher looked at me and, calling my name, said: ‘You sit down for the present, and rise with the others.’ I did not quite understand her, and questioned: ‘Ma’am?’ She repeated, with a softer tone in her voice: ‘You sit down now, and rise with the others.’ I sat down dazed. I saw and heard nothing. When the others were asked to rise, I did not know it. When school was dismissed, I went out in a kind of stupor. A few of the white boys jeered me, saying: ‘Oh, you’re a nigger too.’

Johnson himself realizes on reflection that this is the moment in which he literally became black.



And so I have often lived through that hour, that day, that week, in which was wrought the miracle of my transition from one world to another; for I did indeed pass into another world... Since I have grown older I have often gone back and tried to analyze the change that came into my life after that fateful day in school. There did come a radical change, and, young as I was, I felt fully conscious of it, though I did not fully comprehend it.

It is this sort of immediate, but often not so explicit or audible, naming that creates most black individuals in the United States. Of course, a recognizably-black phenotype allows thoroughly-conditioned individuals to instantaneously name. Because of this, the initial naming of blackness is extremely difficult for the philosopher – and the social scientist – to isolate. And so, while this process is ubiquitous, it is the difficult and ambiguous cases that provide a glimpse into it. These cases involve the same intersubjective dialogue, consensus-building, and attendant effects as the more “obvious” cases, but in a slower, more visible way. And they will be the focus of the next chapter.

But, following Paula Rothenberg (1999), even in the “obvious” cases, this end of the spectrum is still intersubjective, and not merely identification by third-party ascription. She points to “the two-sided or dialectical nature of the process wherein difference is defined. For it is not only the racist or sexist who constructs difference but the victim of each or both who seeks to create difference as well.” As Eduardo Bonilla-Silva (1997) explains, “Because races are socially constructed, both the meaning and the position assigned to races in the racial structure are always contested. What and who is to be Black or What or Indian reflects and affects the social, political, and economic struggles between races.” So while Fanon cannot immediately be anything but a black man, he posits this as but a stage in his challenge to a white supremacist society which racializes him.

At the opposite end of the intersubjective spectrum is race – or perhaps a *lack* of race – wholly by self-identification. Zack argues that the lack of a scientific basis for race leaves only complete self-identification as an acceptably-unconstraining method of racial naming. This

purely voluntaristic version of self-identification often leads, as it does with Zack, toward a form of eliminativism that allows a rejection of any and all racial identification. “And if race itself is a fiction,” Zack argues, “then no one should be compelled to identify herself or be identified by others in any way at all racially, if she so chooses. Failure to identify in some specific way racially or in any way racially, ought not put anyone at a disadvantage compared to those who do so identify” (128). Interestingly, Zack's rejection of race and thus the possibility of determining an individual's true race, allows her to accept the possibility that black people can be made. When speaking of mixed race individuals, at least, Zack uses similar language to my own, describing how, “Using preset energy and making commitments for the future, she invents her racial identity at the same time she tells herself she is discovering it” (126).

Practically, however, I support Mills's critique that a pure eliminativism and subjectivism of the sort Zack desires is simply a non-starter in a society in which racial ascription so greatly affects life chances. Not only does the eliminativist position reject any and all political and cultural responsibilities of race, but an individual's eliminativist desire will invariably be rejected. In his autobiography, Barack Obama (2004) succinctly recounts his inability to self-identify as non- or post-racial while growing up amongst individuals identifying him as black. And in Frances Harper's classic *Iola Leroy* (1969), Miss Delany tells Mr. Leroy, “he must put a label on himself, saying ‘I am a colored man,’ to prevent annoyance.” Rejecting racial labels is simply unacceptable to too many to be plausible.

### **Context Dependency**

Because the individuals involved in dynamic nominalism are named within specific geographical, historical, and temporal contexts, the race named and made can differ for single

individuals when these contexts change. Sometimes, blackness will indeed be created anew in a new location, whether in a distinct population of interlocutors or across time. For instance, an individual's race may be a settled matter in her hometown – the intersubjective agreement long since having occurred – but require a new intersubjective dialogue when she moves away for college. A black woman in one context might literally be non-black in another. While this is most likely when the individual is either racially ambiguous or does not fully self-identify as black, the possibility exists for everyone.

Of course there will be consternation about someone's race changing across contexts, but this should not be a controversial claim. This is exactly how Henry Louis Gates, Jr. (1997, 180) describes the racial of life of the aforementioned Anatole Broyard, who Gates says, “was born black and became white.” And to see how a new context can require a new racial determination, one needs only think about a light-skinned black American moving from the United States to Brazil, arriving to find new rules and different racial possibilities. The change in context within the United States rarely changes the rules or races available, but instead introduces a new set of arbitrators. These new contacts might require new dialogues, dialogues in which rules are weighted or accepted differently. In the next, which acts as both an empirical and qualitative defense of dynamic nominalism, we will see this racial recreation occur in President Obama's entrance into the national consciousness. While Obama's blackness was perhaps a settled issue in Illinois, it certainly was not across the United States.

This is not to say that an individual must always have her blackness ascribed anew in every social context in order to be black. In certain contexts, a mix of self-identification and the cognitive possibilities Piper (1990) describes will be sufficient. This occurs primarily when the individual was previously created as black people in other situations, and their knowledge of this

creation and/or their knowledge that would likely happen again, affect the individual's perspective and actions. The experience of conscious passers shows this nicely. The occasions of worrying about being "found out," feeling like a fake or a traitor, and the impacted relationships with blacks and whites alike, demonstrate that their internal naming is sufficient to activate the dynamic aspects. The NAACP's Walter White, for example, famously passed as white when among whites in order to investigate lynchings and race riots, and modified his voice, friendships, and habits in order to maintain the deception. Literature by and about passing black Americans repeats this. Again, Johnson's narrator in *Autobiography of an Ex-Colored Man* consciously eschewed anything associated with black culture even though anyone who could identify him as black was long dead. The conscious passer's knowledge of his own blackness is enough to trigger race's attendant impact.

### **Response to Racial Realists**

While a majority of researchers accept race as a social construction, the position does not enjoy unanimity. As Mallon (2007) describes it, "A 'racial realist, in the most minimal sense will be somebody who thinks it is objectively the case – independent of human belief – that there are natural human races; in other words, that races are natural kinds," and that differences "extend to significant moral, intellectual, characterological, and spiritual essences." Often termed racialism, this objectivist position transforms into racism when positive and negative essences are not evenly or accurately distributed. As Appiah indicated, a racial genetic pluralism, however unlikely, is not immoral. But given the United States' history of racial oppression and the reliance of intrinsic racism on a form of racialism, promoting the idea that race is a biologically relevant fact is not to be done lightly. Philip Kitcher (2007), while staking out a separate racially

objectivist position, acknowledges that there is a question as to whether race's supposed usefulness in health care can ever outweigh its reifying harm. Biological essentialism is currently the domain primarily of white intrinsic racists and scattered black nationalists, with the Nation of Islam the chief proponent of a racist black nationalist strand. Even Afrocentricity, while explicitly essentialist, purports to eschew biological essentialism, relying instead on a shared cultural, historical, and evaluative heritage.

Perhaps more importantly, racialism even in its neutral form, runs fully counter to the biological and anthropological consensus. No consistent correlation between genetics and our socially accepted racial categories has ever been found. As an objectivist position within mainstream science, biological essentialism has thus been largely supplanted by racial population naturalism, “the view that races may exist as biologically salient populations albeit ones that do not have the biologically determined social significance once imputed to them.” This view, most- visibly pushed by Kitcher and Robin Andreassen (2000), turns to population genetics and wonders whether “race” – as created by reproductive isolation – *might be* an effective, socially-defined grouping useful to biologists and medical doctors in much the way “species” currently is. Heart medication aimed specifically at black men is a practical example of the results. Thus, population naturalists and medical researchers typically utilize “race” while professing agnosticism, claiming to sidestep the issue of whether race and blackness exist.

But, in fact, a closer look shows the efforts of population naturalists to actually be wonderful examples of dynamic nominalism at work. In one of the few social scientific efforts to document something akin to dynamic nominalism in action, Duwana Fullwiley (2007) demonstrates how ingrained notions of race drove and warped biological researchers’ search for race’s existence. A prior intersubjective agreement about the meaning of blackness on a macro

level determined the race-based findings. Kitcher (1999) himself acknowledges something akin to Fullwiley's findings, admitting that researchers and computer programs must be told *in advance* how many racial population clusters to find. Varied inputs result in very different divisions of clusters, many of which lack the geographical consistency that a population-based theory of race requires. Essentially, a pre-existing "knowledge" of the number, names and geography of races heavily controls the outcome, and population naturalism requires some prior intersubjective agreement on race to be effective.

## **Conclusion**

The social scientist's response to discussions of the sort in this chapter is typically to acknowledge that "race is a social construction," but then to claim this fact is irrelevant to her findings. The number and locations of black people are instead taken as a dependent variables, used to explain other phenomena, rather than as independent variables that change with dialogues and contexts. Whether, how, and why race exists is largely ignored, as long as using the term is "effective," with results falling within the margin of error. By ignoring the details of racial construction and simply employing terms such as "race," "black," without contemplating their meaning or the processes that make them, social scientists, while gesturing toward social construction of race, are really mirroring population naturalists. In practice, then, there is sometimes insufficient difference in social science work between social constructionists and biological essentialists.

For social constructivism to truly have meaning and use for social scientists, attention to the type and details of the construction is exceedingly important. For instance, the context-dependent naming seen in dynamic nominalism – and the related fact that a majority of black

individuals report self-identifying differently across contexts – likely means the size of black populations cannot be taken for granted. And the need for at least a burgeoning consensus on racial naming prior to racial effects might shift our understanding of when it is race that matters. Perhaps the difference in most analyses will be marginal, but social scientists should care about the edges, even when they are within the margin of error. Otherwise, the implication is that it is acceptable to act as if race is a biological reality in all ways relevant to quantitative research. Social scientists must acknowledge that they are part of a public discussion and avoid this sort of reification.

This is but one of several interconnected concerns that any scholar of race should consider. Dynamic nominalism's position as a descriptive project does not preclude a critical element. So while the way in which blackness is created is partially an empirical claim, the intersubjective and contested nature of blackness demands that we push definitions of blackness in the direction of justice and fairness. As participants in the intersubjective definitions, we are allowed a space to drive the dialogues. It is possible to compile a reasonable list of concerns one should have when articulating what blackness is. This list is all but certain to include, among other things, the reification of stereotypes of black people; the internal cultural and political oppression made possible when a single notion of blackness is privileged (Cathy Cohen, Adolph Reed); the extent to which racial categories affect life chances (Appiah, William Julius Wilson); the extent to which un-chosen racial categories should affect life chances (Bernard Boxill); the ability of governments and citizens to attack discrimination, racially-based distributions, and non-distributional injustices (Wilson, Stephan Thernstrom and Abigail Thernstrom); the ability provide a sense of self (Charles Taylor); the possibility for intra- and inter-group cooperation, via common interests, language and dialogue (West), and the level to which it allows for (imagined)

self-expression and self-determination (Zack). Several of these concerns will be addressed in the following chapters.



## CHAPTER TWO:

### BARACK OBAMA AND THE MAKING OF BLACK PEOPLE

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#### Introduction

“Racial Barriers Fall in Decisive Victory,” rang the *New York Times* banner headline. On November 4<sup>th</sup> 2008, Democrat Barack Obama resoundingly defeated Republican candidate John McCain to become the 44<sup>th</sup> President of the United States of America. And a country built on the backs of slaves had its first black president.

Just two year earlier, however, Obama's blackness was nearly as in doubt as his victory. On November 2<sup>nd</sup> 2006, the Williams Identity Survey asked a nationwide population, “In your opinion, is Senator Obama, black, biracial, mulatto, multiracial, white, or none of the above?” Almost exactly two years later, when dozens of newspapers blared a variation of “America Elects First Black President,” this question might have seemed almost absurd. But not only did respondents not think it nonsensical, an overwhelming majority described Obama as something other than black. More than 80% of white people and 20% of black people, prepped with knowledge of Obama’s “white” Kansan mother and “black” Kenyan father, did not describe him as black. In fact, 7% of whites described Obama as white himself.

In the eyes of most Americans, and especially the white public, what was so obvious to headline writers in 2008 was downright wrong in 2006. Obama, to most Americans at that time, was simply not a black man. Yet, following the general election, objections to descriptions of Obama as America's first black president were few and far between. The man who most had described two years earlier as white, mixed race or biracial was hailed by nearly all as the country's first black president. The public had not simply changed its mind, received new

information, or corrected a mistake. Over the course of those two years, Obama had literally become a black man, with little ambiguity remaining.

Obama's journey in the national context from ambiguously-raced to black is vivid and compelling evidence of the dynamic nominalism of blackness argued for in the previous chapter. The very public discussions of his race, its eventual culmination, and the racialized events that spring up around them, provide a clear example of the philosophical claim in action.

## **Purpose**

As discussed in Chapter One, the dynamic nominalism of blackness has both theoretical and descriptive components. Not only is it defensible in theory, but it accurately describes a real-world process. Black individuals in the United States are made through naming, and the interaction of these names and society subjects them to the positive and negative effects of being black in America. In this chapter, I use the case of Barack Obama to illuminate and defend the claim. It is both a demonstration of the process, and an empirical test of the philosophical claims. Using survey data on Americans' perceptions of Obama's race, discourse and content analysis of the evolving use of racial descriptors in the American media, and the reaction to several important racially-charged events during the presidential campaign, we will see that it is a dynamic nominalism of blackness that most accurately explains blackness in America. In essence, I use quantitative and qualitative data to defend dynamic nominalism, testing it against other social constructivist notions of race, including self-identification and rules-based theories.

Now, some of the theorists discussed in Chapter One would immediately reject the notion that *any* empirical methodologies, let alone the ones employed below, are appropriate tests of philosophical accuracy. Philosophical definitions of race and blackness are meant to further our

understandings, some would claim, not to exactly describe how race actually exists on the ground. And in some contexts this is true. Naomi Zack's (1995) eliminativism, for example, is obviously a political definition of race, concerned with promoting a perhaps-laudable preferred future more than perfectly describing the present. But a majority of the philosophers at the very least make claims that employ descriptions of race in America, and that are explicitly falsifiable through these descriptions. The rules-based theories from W.E.B. Du Bois (1897), Lucious Outlaw (2005) and others most obviously do this. Were Americans not actually employing phenotype, ancestry, etc., in their racial determinations, the theories would be gutted. As would be even Kwame Anthony Appiah's (1994) critiques of these theories, and of "race" in general. His critique from the ideational nominalist perspective, for instance, relies on a reading of real-world uses of raced beings in denying that these rules accurately describe anything that actually exists. Less obvious but no less reliant on empirical claims is Robert Gooding-Williams's (1998) use of the real world choices and actions of the individuals being described in his distinction between blackness and "black people." Much more obvious is that population naturalists care wholly and only about empirical outcomes. Their biology-based perspective lives and dies based on how well it informs and improves biological and medical knowledge and use.

Arguably, social constructivist theories more than any others demand this sort of empirical investigation. If it is our social world that makes race, or at least makes race relevant, we should be able to describe the actual social mechanisms that go into that construction. Most social constructivist thought outside of race has acknowledged the natural alliance with, and import of, empirical investigation. While discussing the social constructivist debate in the hard sciences, Ron Mallon (2008) explains that,

"construction" talk has a more or less independent, but equally contentious life in the "human nature wars" where it labels the position that human traits (for example the emotions) or human kinds (which we can think of categories whose members share traits

or clusters of traits, including, especially, dispositions to think and behave) are produced by culture rather than by biology or nature. This view is typically allied with classic empiricism and contrasts with the view that human traits are to be explained in terms of non-cultural mechanisms - especially internal, biological or natural states of the organism.

And Ian Hacking (2006) details the importance of empirical investigation to confirm or undercut his contention that certain kinds are socially constructed. For instance, he explains, “Conjectures about my examples, obesity and autism, abound. Fortunately there is competition. Different groups have different guesses about which one will be corroborated. We might find that there is no genetic basis for autism, and none for all but a small proportion of obese persons. Or we might find that most obesity and all autism is linked to a certain organization of genetic anomalies. It is important to know.” Similarly, Paul Boghossian (2001) points to Mary Boyle's controversial claim that schizophrenia and schizophrenics are socially created, and the need to evaluate this claim through actually observed data. Whether schizophrenia is a socially constructed catch-all for a variety of actually-unrelated symptoms, or whether evidence of predictability and heritability of symptoms means that “facts point in the opposite direction,” is an empirical question. So it is only through rigorous empirical exploration that we can confirm autism, schizophrenia, or obesity as a social construction. And the evaluation requires data on top of argumentation.

Although social construction in general is “typically allied with classic empiricism,” (Mallon 2008) arguments for the social construction of race rarely employ empirical defenses to the extent necessary. There certainly have been attempts to use empirical data and careful observation in an attempt to prove the general case of the social construction of race. And the attempts have found success. Partially on the back of this empirical analysis, we have reached the ontological consensus rejecting racialism discussed in the previous chapter.

The use of data – from genetic testing to genealogical history – has been confined,

however, to refuting biological and other non-socially constructed definitions of race. Beyond the empirical tests to determine whether race is socially constructed, there is little use of empirical data to specify exactly how that social construction occurs. Lawrence Hirschfeld's (1995, Ch 4) research into children's developing notions of race is a notable exception. Specific strains of racial social constructivism, however, rarely if ever undertake rigorous empirical observation to defend their unique social constructivist take. Many are exclusively theoretical. And those that do employ descriptions of the world in defense of their theory often rely on evidence that is at best anecdotal, often based on personal experience. Even the strongest, such as Adrian Piper's (1992) use of personal history or Ian Haney Lopez's (1996) discussion of his Irish and Salvadoran roots, extrapolate from individual experience. Those that seek a larger purview often resort to quick, sweeping pronouncements about history. Or they turn, as with Charles Mills (1998), to thought experiments that implicitly rely on the reader's common sense understanding out how people would act in a given circumstance, rather than examining how they actually do.

Now, these arguments have been incredibly fruitful even without the systematic use of empirical evidence. And there are numerous reasons why proponents of specific forms of racial constructivism might avoid supplying detailed descriptions of the construction taking place. These could include a desire to not replace biological essentialism with another set of empirical facts defining blackness, the simple truth that philosophers rarely attempt to use empirical data or complex observations to defend claims, and the fact that many of these definitions of race are inherently political and meant to change the world more than to describe it. Whatever the reason, we are left with multiple competing anti-essentialist theories of blackness, including several competing social constructivist theories of race.

While some of these theories do not purport to explain or even describe the reality of racial descriptions in the United States – and could perhaps survive empirical evidence of inaccuracy – there are still numerous advantages for philosophical definitions that do so. First, for those with a commitment to a social constructivist definition of race – which includes most of these philosophers and most who support non-essentialist definitions – it only makes sense for a definition based on social processes to accurately describe those social processes. As discussed in Chapter One, social constructivist frameworks must be heavily connected to observable – and, hopefully, actually observed – constructions. Second, the progressive demand in African American philosophy as described by Mills demands a philosophy that can better the world. A conception that can be accepted and understood by those who are making race and blackness – both the media, government, and public at large – is more likely to move Americans to a desired racial outcome. While a biologically-based definition of race could possibly also be beneficial, as Appiah (2005) concedes a neutral conception of racialism could be, he also stresses that historical evidence makes this an enormous implausibility. Finally, hewing to empirical accuracy allows a better understanding of how public definitions of race move and shape American actions and policy. This will become even clearer in Chapter Four, as we see how the United States Government's definitions of blackness impacts its role in combating workplace discrimination.

### **Barack Obama as Illustrative Example**

As argued in the previous chapter, the naming and making of blackness occurs for every black person in the United States. In most cases, however, familiarity with norms of racial naming and clearly indicative phenotypes allow this naming to occur instantaneously and largely

internally, away from others' gaze. It is the non-obvious, and usually ambiguous, case in which the naming is delayed, settled only through verbal and non-verbal dialogue and an eventual intersubjective agreement. The ambiguous case, then, is the necessary entry point for observation, as those dialogues have become visible.

Obama, even considering his self-identification, choice of church, an unambiguously African American wife, is a one of these ambiguous – though not anomalous – cases. His white mother, his black father who was not the descendant of American slaves, his skin tone and facial features, and his upbringing outside of a major black population center made his race non-obvious to many. While an observable discussion is likely extant in nearly all ambiguous cases, only public cases such as that of Obama provide social scientists with sufficient access. Moreover, the enormous public discussion surrounding Obama, its national character, and its drawn out nature provide a depth unavailable elsewhere. Media accounts, surveys and the public discussions and conclusions of both private individuals and public figures have created a wealth of data for analysis. And as I have posited that dynamic nominalism and the intersubjective agreement must occur in each new context or sphere, Obama's meteoric rise from national unknown to the leader of the free world allows us to view the entire length of this particular dialogue.

President Obama's race was certainly ambiguous in the national context. His blackness might have seemed obvious to some from the start – and to others from a presentist perspective in which his race might now seem a settled issue – but the American public did not find it so obvious even two years after he burst onto the national scene. In 2004, then-Senator Obama gave his famous speech to the Democratic National Convention, forcefully decrying and denying the perceived Red State-Blue State divide, and announcing himself as a serious player in the future

of Democratic politics. From that moment up through the first months of his presidential campaign, nothing approaching a consensus on his race existed.

In November 2006, as Obama's participation in the Democratic presidential primary seemed increasingly likely, the Williams Identity Survey and Zogby International launched the earliest national poll of American perceptions of Obama's race. A public only somewhat familiar with Obama was provided with information about his parents' race, and were asked to determine, if possible, Obama's own race. The questions asked, "Barack Obama, the junior Senator from Illinois, is being heralded as a potential presidential candidate in 2008. Senator Obama's mother is white and his father who is from Kenya, Africa is black. In your opinion, is Senator Obama, black, biracial, mulatto, multiracial, white, or none of the above?" While a visual of Obama did not accompany the question, the description provided sufficient information for those following the rules of ancestry, biology and/or geography to make a firm conclusion. And yet, no consensus was found. In fact, the number of respondents identifying Obama as black, biracial and multiracial were almost identical, with a smattering of people answering white, mulatto, none of the above, or not sure. Blackness was at least partially constitutive of the identity selected by most respondents, however, indicating the information pushed toward a consideration of blackness, though certainly not toward a consensus on its full import.

### **Qualitative Analysis**

Considering this disagreement, determining how the mainstream media came to define blackness and to fit Obama within that definition becomes very important. And the real world defense of dynamic nominalism can be built upon media's acknowledgment of dynamic nominalism's intersubjective dialogue and its own role in that dialogue. This metadiscussion can



be thought of through the lens of discourse analysis, as the discussion and metadiscussion not only recount the debate, but themselves affect the meanings and impact of the terms.

The media's metadiscussion explicitly endorsed a definition of Obama's race that was essentially intersubjective, basing its racial descriptor on a combination of self-identification and ascription by others. Their reasoning, while not to be taken as gospel, explicitly endorsed the use of racial descriptors which were intersubjectively agreed upon. For instance, the Associated Press, whose articles and analysis dominate newspaper discussions of politics and race through both reputation and sheer numbers, endorsed such a view. As Karen Hunter, the Reader Representative at the *Hartford Courant*, explained in 2008, "Because *The Courant* relies on the Associated Press for much of its national coverage of the presidential race, the AP plays a key role in how the newspaper presents the candidates." In accounting for the AP's decision to use of "black" and "African American" as the proper – and essentially interchangeable – descriptors for Obama, AP Senior Managing Editor Mike Silverman explained, "I would say the answer has to do partly with the way Sen. Obama has defined himself and partly with the way American society defines someone who is biracial." While Silverman implied a static public definition of black and biracial individuals, and ignored his organization's own role in creating and shifting these definitions, the AP relied on what it perceived to be the intersubjective consensus in order to determine Obama's race, rather than any set of facts related to American rules regarding blackness. Nowhere in Silverman's recapitulation of the AP's behind-the-scenes discussions does he mention Obama's parentage, hypodescent, biology, or other American rules of race, although they perhaps form the background of "the way American society defines someone."

The *Washington Post*, *Hartford Courant*, and *New York Times* editorial boards were among the media to take similar stances. While endorsing and explaining the AP's use of an

intersubjective standard in deciding how to describe Obama, the *Hartford Courant* stated that, “Obama's candidacy is a rare and riveting opportunity exactly because it is forcing conversations about issues that have been easier to ignore for centuries.” And in CNN's “Behind the Scenes” look at it's coverage of Obama's race, Jay Carrol somewhat retrospectively summed up the media's predominate position, writing, “A columnist examining Obama's background summed up his racial identity into one equation: 'white + black = black.' For me, that said it all.” While the piece is entitled “Obama: Black or Biracial?” and Carrol continues with a discussion that claims the answer is complicated, the “accuracy” of the description is treated as an academic exercise attendant to the obvious conclusion based on an assumed social ascription.

Unsurprisingly, however, a portion of editors and columnists – as opposed to reporters – of many newspaper and magazine editorial pages do, in fact, attempt to “accurately” determine Obama's race. In that same *Courant* defense, the board wrote, “Given its power, the press has an obligation to inform that dialogue as accurately as possible.” This should be unsurprising, as a discussion of rules, especially hypodescent, still dominates discussions of racial determination whether or not they are actually or logically applied. This tendency, and the contentious claims that come along with it, are obvious in an early, illustrative editorial by *Salon Magazine's* Debra J. Dickerson (January 22, 2007). In the piece, Dickerson denied Obama's blackness by directly pointing to a set of socially constructed rules that included phenotype, biology, and (enslaved) ancestry, as well as political and cultural commitments. “Black,' in our political and social reality,” Dickerson wrote, “means those descended from West African slaves. Voluntary immigrants of African descent (even those descended from West Indian slaves) are just that, voluntary immigrants of African descent with markedly different outlooks on the role of race in their lives and in politics. At a minimum, it can't be assumed that a Nigerian cabdriver and a

third-generation Harlemites have more in common than the fact a cop won't bother to make the distinction. They're both 'black' as a matter of skin color and DNA, but only the Harlemites, for better or worse, is politically and culturally black, as we use the term.” The distinction Dickerson makes is reminiscent of that which Gooding-Williams (1998) makes between blackness and black people. But here, it is a biological and phenotypical commonality amongst “African Americans,” while further cultural and political commitments – apparently based heavily upon a legacy of slavery in the United States – separate out “American blacks” as a subset of these “African Americans”. And while the most important question here is not whether Dickerson was correct in calling Obama “not black,” it is worth noting that the claim that Obama's cultural and political commitments meant he was not black “as we use the term” would only be correct, even in 2007, were the “we” to exclude a wide majority of black people and a substantial minority of whites who said something very different to pollsters.

But whether Dickerson correctly identified the American rules of blackness, she exemplifies a belief that one can divine – or at least that *she* can divine – those rules that the American public everywhere and always applies. And one – or she – can thus correctly determine Obama's race through an extant set of rules which could be applied to facts about Obama. Perhaps tellingly, however, while claiming to rely on a set of rules that purportedly define blackness in the United States, Dickerson actually slips back into our use and acceptance of the term as the proper arbiter.

The intersubjective dialogue is not just about whether one particular individual is black or white, but is a debate over what determinants, if any, to employ. It partially determines the rules employed within rules-based theories of race. While not the focus of this analysis, it is important to note that these authors were, consciously or not, engaged in a discursive battle over what

blackness would mean. While the writers treat black, multiracial and the others terms of debate as static, they contribute to the intersubjective understanding, since who counts when we use the word “black” is itself part of the meaning of that term. A prime example can be seen in Christopher Hitchens' January 2008 article deriding Obama's membership in Trinity Church. Hitchens asked, “Isn't there something pathetic and embarrassing about this emphasis on shade? And why is a man with a white mother considered to be 'black,' anyway? Is it for this that we fought so hard to get over Plessy v. Ferguson? Would we accept, if Obama's mother had also been Jewish, that he would therefore be the first Jewish president? The more that people claim Obama's mere identity to be a 'breakthrough,' the more they demonstrate that they have failed to emancipate themselves from the original categories of identity that acted as a fetter upon clear thought.” Clearly, Hitchens sought to affect the meaning of the term black by stripping away, among other things, its phenotypical components. He seemingly also critiques our reliance on any genealogical rules for determining identity, as his hypothetical question about Judaism would require an assent by Jewish law that Hitchens obviously finds untenable. And in the very same week as Dickerson's article, Marjorie Valbrun wrote in the *Washington Post*, “It makes me angry. I'm angry for Obama, too. People are asking whether he's black enough to represent them. I ask, black enough by whose standards? Why must Obama's life follow the same track of 'authentic' black folk to pass this litmus test?” (1/17/2007). The *USA Today*'s most prominent letter to the editor following the Obama's Philadelphia speech on race came from Casey Meyers of Saint Joseph, Mo, who sought to undermine hypodescent. “As an 80-year-old undecided white voter...,” Meyers wrote, “I believe we must get beyond automatically labeling a person black who clearly has other racial blood. Obama is the son of an all-black African father and an all-white mother from Kansas. To any casual observer, Obama's skin color is neither black nor white

and labeling him either one is obviously wrong.” Certainly there were both explicit and implicit attempts to influence the rules that journalists were simultaneously claiming to apply.

## **Quantitative Methodology**

The qualitative discourse analysis above can be complemented by the quantitative content analysis below. Recently, much has been written on the compatibility of discourse analytic as a methodology and content analysis of a method. Following a Harvard conference on content and discourse analyses, Herrera, Hopf, Hadley, et al. (2004) published a back-and-forth over whether the two methods were antithetical, complementary, or neither. The primary relevant concern is whether discourse analysis, which posits that the meanings of the terms in use are at all time in flux, and content analysis, which must treat the meaning as static in order to quantify, are theoretically and methodologically usable in conjunction. Here, I follow Hopf, et al. in using them together.

My current purpose is not to examine how the meanings of the terms applied to Obama – or of the categories and individuals that those terms represent – have shifted since his rise to prominence. That perhaps-slight but certainly extant shift is important and has begun to be illuminated. Sociologist Kimberle DaCosta (2009), for example, has written about how Obama's presence contributed to a shift in the meaning of multiracial identity and intimacy, detailing, “The public discussion of Obama's racial position is redefining multiracialism as an identity capable of conveying a new kind of authenticity.” But my primary concern here is not to determine exactly what those categories mean and do, but whether and how Obama has been made a part of those categories, and subsequently whether that naming created real-world racialized consequences. My conception allows for different individuals naming an individual as

black for different reasons; and the various reasonings are evident from the coding analysis that follows. As long as the way in which being black in the United States had relatively constant effects over the past two years, using content analysis in order to quantify is acceptable.

Since my claim is one of actual impact rather than simply the meaning or theoretical importance of naming, I must demonstrate that the media analyzed are sufficiently widespread and believed by their audience that such a real world impact is plausible. While much has been made about the decline of the newspapers in the United States, they still more than fulfill this function. The daily circulation of weekday morning editions of US daily newspapers is an enormous 44.5 million. While on the decline, this is still 3.2 million more than the circulation in 1990, as most of the overall decline has occurred in weekday evening circulation. Circulation of Sunday editions is higher than weekdays, at 51.2 million each week in 2007 (Editor and Publisher Yearbook 2007). While more Americans report acquiring the news from television than newspapers, most of this is through local and national network news, where long form discussions and analysis are rare. Viewership of cable news, where these discussions do occur, is rising rapidly. Still, with audience levels at an all-time high in 2008, the median audience for prime time cable news on CNN, Fox News and MSNBC combined was just 3.64 million. The daytime audience was barely half that, at 1.86 million (Nielsen Media Research 2010).

Additionally, newspapers and the facts and arguments they present are respected at least as much as television. The favorability rating of newspapers was 65% in 2009, slightly ahead of network television news and cable news. The 9% favorability gap between Democrats and Republicans is also just one-third of the gap regarding television news, implying a more evenly spread impact through newspapers. (The Pew Research Center for the People and the Press 2010)

As I'm concerned with Obama's race in the national context, the predominant data collection and analysis revolves around a combination of newspapers from across the nation. The data come primarily from LexisNexis Academic Search's "US Newspapers and Wires" group, which contains "1) newspapers published in the United States and 2) wire services where more than 60% of the stories originate in the United States." The hundreds of newspapers included cover the vast majority of all newspaper circulation in the country. Collection began with articles published in June 2006, the first month in which Obama was mentioned in an average of at least 10 articles daily. It concluded on January 31, 2009, the end of the month in which he was inaugurated president. The number of articles collected over this time that mentioned Obama exceeded 250,000.

In addition to the "US Newspapers and Wires" group, I collected identical information from several individual newspapers. This served multiple purposes. First, it allows a test against the possibility that the sheer number of articles from wire services, primarily the Associated Press, drowned out newspaper-written articles in the data. This is not a concern in terms of the raw amount of naming and labeling that occurred. Second, the individual newspapers can give some insight into regional variation in how Obama is described and the reasoning used. For instance, the *New York Times* found distinct racial naming and heightened effects in Southern States, writing, "The McCain campaign's depiction of Barack Obama as a mysterious 'other' with an impenetrable background may not be resonating in the national polls, but it has found a receptive audience with many white Southern voters." While not systematic, the *Times* found that, "In interviews here in the Deep South and in Virginia, white voters made it clear that they remain deeply uneasy with Mr. Obama – with his politics, his personality and his biracial background." And third, collecting data from individual newspapers allows comparison to state-

level polls and survey that offer information complementary to that found in national surveys. Because of primary campaigns and the importance of states in the electoral college, there is an abundance of state-specific data to complement national polling.

I collected data from the *New York Times*, *Chicago Tribune*, *Atlanta Journal Constitution*, and *Columbus Dispatch*. The *Times* was chosen for its location in the northeast, its status as a quasi-national newspaper, and its position as “The Paper of Record,” whose lead is followed or which drives discussion. The *Tribune* was chosen because it was the first large paper to follow Obama, and could show the impact of time. It also has a mixed racial readership. The *Journal Constitution* is a Southern newspaper, with a substantial black readership, publishing in a state which had both a contested Democratic primary and general election. And the *Dispatch* covers a Midwestern state which also had a heavily contested primary.

No black newspaper was added to the list of regional papers, largely because none has a market share that would indicate an impact sufficient to the one I theorize. The average weekly circulation of *all* black newspapers was only 250,000, less than one-tenth of one percent of total newspaper circulation. No individual black newspaper maintains a daily circulation of even 20,000 (Advertising Age. April 7, 2008). This is unfortunate, as the hugely disparate claims on Obama's between blacks and whites indicated in survey results helps boost my argument that blackness has to be made in each social context. While black Americans are involved in and aware of the mainstream public sphere, there also exists an alternative black public sphere in which internal discussions are held and separate conclusions are drawn. Melissa Harris-Lacewell (2004) identifies many of the places in which this sphere exists, including black media, barbershops and beauty salons, and black churches. And while Michael Dawson (2001) claims the black public sphere to be small or non-existent, his data show that participation in black



media – in one case, listening to rap music – can have real affects on individuals' beliefs. That such a large racial difference was found in separate communities armed with largely the same set of facts about Obama might indicate that blacks and whites largely inhabit different intersubjective communities when it comes to determining and making race. The similar, though less-pronounced, differences in assessments of the race of golfer Tiger Woods back this up. Thus, it is certainly possible that the disparate claims and attendant treatment should be treated as two separate instances of race-making. And it becomes more believable that movement from the local or state contexts to a national one entailed a mostly new making of Obama's race.

From a review of a non-random sample of approximately one hundred newspaper and magazine articles, blog posts, and transcripts of television news segments, I created a dictionary for the content analysis. I identified approximately 20 words and phrases that have been used to describe Obama racially. I then added ten more racial descriptors that have been used historically and could plausibly be used to describe him. Below is the dictionary of terms, clustered by racial implication:

**Table I. Dictionary of Terms**

<b>Terms Denoting Blackness</b>	<b>Terms Denoting Racial Mixture</b>	<b>Terms Denoting Whiteness</b>	<b>Terms Denoting Experience/ Geography</b>	<b>Terms Denoting Negatively-Defined Identity</b>
African American	Biracial	Caucasian	African	Non-Black
Black	Half-black	White	Enslaved	Non-White
Blackness	Half-white	Whiteness	European	Post-Racial
Brown	Mixed (Race)		Immigrant	
Colored	Mulatto		Kenya(n)	
Negro	Multiracial		Minority	
Of Color	Mutt		Slave(ry)	
	Octoroon			
	Quadroon			

An initial search found only five of these terms were used to describe Obama's race to any significant degree. They were “black,” African American/African-American,” “biracial,” “multiracial,” and “mixed race.” Searches for relevant articles were made in order to find all articles containing reference to Obama and any of those five words and phrases. As an additional step, I analyzed use of the terms “black” and “African American” in conjunction, as if they were identical. Although distinct in meaning and history – as will be discussed further – the differentiation is often ignored by both the public and press, with “African American” often simply considered the politically correct version of “black.”

In addition to the raw word counts achieved through the searches, the articles were coded in an effort to understand the context and use of the terms' use. The main purpose of the coding was to quantify the reasoning which newspapers present in naming Obama racially, and to find whether certain sorts of evidence or reasoning align with the use of certain labels. For instance, articles labeling Obama as multiracial rather than black might tend to employ ascription by others rather than self-identification. The coding scheme determines: the type of article (as, for instance, straight news articles and opinion pieces are read differently), whether its focus is on Obama's race or race in general, the descriptors used, and the authority on which they are employed– and whether any of these changed over time. The basic coding scheme follows.

## **Table II. Coding Scheme**

**Source:**

**Date:**

**Type of Article:**

News Item

Editorial/Opinion Piece

Appears on the Editorial Page, Labeled “News Analysis,” “Opinion,” etc.

Letter to the Editor

**Focus of Article:**

Article is explicitly about Obama's race  
 Article deals with Obama's race in connection to his support, life experiences, etc.  
 Article is not about his race

**Racial Descriptors Used:**

Black  
 African American  
 Biracial  
 Multiracial  
 Mixed Race  
 Other (Explain)

**Choice of Descriptors Attributed to...:**

Editorial Writer/Letter Writer  
 No One/Journalist  
 Assertion  
     Obama or Authorized Representative  
         (Barack Obama, David Axelrod, Joe Biden after selection as Vice Presidential candidate)  
     Other Democrat/Prominent Supporter  
         (Democratic Governor X, Democratic Senator X)  
     Republican/Opposition  
         (John McCain, Sarah Palin, Republican National Committee officials, Hillary Clinton during Democratic Party primaries)  
     Interviewee/Survey/Public  
     “Expert” on Race  
         (NAACP official, American Studies professor)  
 Set of “Facts”  
     Parentage/Genealogy/Biology  
     Fits US Rules on Race  
         (Hypodescent, Census, etc.)  
     Phenotype  
         Skin, hair, voice tenor, etc., “Looks white”  
     Self-identification  
         References to Obama's books, speeches and interviews  
     Ascription by Others (directly or indirectly, overlaps with “Assertion”)  
         “has been the subject of anti-black racism throughout his life...,”  
         “claimed as multiracial by...”  
     Life Experiences  
         “Raised by his white mother in multiracial Hawaii...”  
     Beliefs/Culture/Way of Being/Affect  
         Black nationalist ideology, NAACP member, “speaks like a preacher”

To make the coding manageable, I sampled every tenth article in which Obama was named

racially.

## **Data and Analysis**

The coding provides strong confirmation of the media's metadiscussion discussed above. The media really do seem to act as dynamic nominalists would expect. In this case, Obama is named as black, and the media then treat him as a black candidate. The data undercut the claim made by the Associated Press and newspaper editors that they treat Obama as black equally because that is what people call him and because that is how he self-identifies. Instead, the source of the racial labeling in a plurality of straight news articles is the unquestioned assertion of interviewees or Obama himself. Adding in the claims of racial “experts” such as NAACP officials, and this becomes a majority. All voices who tend to have a say in national discussions are given their say.

Rarely do journalists themselves simply name Obama racially and leave it at that. On the rare occasions when this does occur, the label is usually black, with the percentage increasing over time. And there is relatively very little direct labeling by journalists in straight news articles (for instance, “The black senator from Illinois...”). The use of rules, or really any discussion of how and why Obama is black, is limited primarily to editorials and letters to the editor. And these can be seen as newspapers allowing writers on their editorial pages to engage directly in the intersubjective discussion on which the news pages rely, allowing columnists to name him however they want and for whatever reason.

The raw numbers surprisingly show only a low level of attention to Obama's race in the early months after Obama's presidential ambitions surfaced. As seen in the graphs, a very low percentage of articles discussing Obama dealt with his race. Barely one-fifth of articles in July

and August 2006, many of which were explicitly meant to introduce the Obama candidacy to a newspaper's readership, made any reference at all to the candidate's race. No repeated naming and discussion of Obama's race in turn meant that no public consensus on Obama's race existed.

The above-mentioned Williams Identity Survey found that in November 2006, a public only somewhat familiar with Obama, and not definitively led in any direction by public discussion, found little agreement in its assessment of Obama's race. After priming with information on the race and origin of Obama's parents, the question asked, "In your opinion, is Senator Obama, black, biracial, mulatto, multiracial, white, or none of the above?" Nothing like a consensus was found. In fact, the survey found a nearly even split between those calling Obama black, biracial, and multiracial. And a nearly two-thirds majority named him as something other than black. Very few of those, however, named him white, indicating that the "rules of blackness," while not definitive, did circumscribe the possible agreement.

The differing opinions and white and black respondents was stark, further laying waste to any idea that a consensus existed in 2006. The poll found an enormous racial disparity in how Obama was designated. A staggering majority of white respondents, 82%, described Obama as biracial, mulatto, or multiracial, while only 22% of black respondents agreed. A black majority of 66% agreed that Obama was black, dwarfing the eight percent of white respondents who answered the same. In fact, the eight percent of white respondents who described Obama as black barely surpassed the six percent who described him as white and the seven percent who described him as "None of the Above". The poll found that black people, on the other hand, essentially never described Obama as white, or even mulatto or multiracial. Hispanics and Asian-Americans answered similarly to whites, using terms other than black 88% and 77% of the time, respectively. Hispanic respondents answered in a manner very similar to whites, with only 9%

naming Obama as black, 61% naming him biracial, 9% mulatto, and 0% multiracial. The only large difference was that, while 6% of whites replied white, only 1% of Hispanics did the same.

This disagreement and confusion highlight the real world impossibility of some of the alternative philosophical definitions of blackness discussed in Chapter One. Most strikingly, the rule-based theories which largely rely on some version of hypodescent and African ancestry are mostly undermined, at least for non-black respondents. The priming information in the survey explicitly stated that Obama's father was a “black Kenyan,” clearly making Obama himself black to those utilizing the one-drop rule. And yet, as mentioned, only a small minority of whites called Obama black. While the wording implicitly distances Obama from a heritage of slavery in the United States somewhat complicates inferences, polling data clearly show that respondents with identical information about Obama's racial background – and little to no familiarity with Obama himself – named his race very differently. (It is unclear whether black respondents employed hypodescent in a way that whites did not. While the answers of black respondents largely correlate with the one-drop rule, it is certainly possible the answers are driven by other, perhaps political, considerations.)

The slight possibility does exist that respondents, though they were asked if Obama were racially black, were really answering in reference to Gooding-Williams's conception of a black person. That distinction, as discussed, rests on a separation between racial blackness and an individual's choice of political or cultural blackness. On this view, the low rate of respondents describing Obama as black would reflect a lack of knowledge about black self-identification and attendant action on Obama's part. And the increase in respondents believing Obama to be black in future surveys would reflect an increase in, or at least an increased knowledge of, his self-identification and action. This, however, is extremely unlikely. The description provided and

answer choices should have left those with this in mind completely unable to answer the question. White, multiracial, mulatto, etc. would not be appropriate labels for someone who is black, but not a black person.

Notice, also, that while there is great disagreement about Obama's race, respondents show almost no inability to answer. The very low rate of “Not Sure” answers implies that respondents felt comfortable describing Obama's race using only the information presented and/or the limited information most Americans had in late 2006. The two percent is extremely low, much less even than the seven percent of Democrats nationally who that week reported not yet knowing which primary candidate they would support. The implication is clearly that the public was not looking for more information to facilitate an application of rules.

The confidence respondents felt in providing an answer is also an implicit, though not complete, rejection of theories which claim race is known through any of alternate type of information not provided. For instance, were voluntarist theories correct, answers would be impossible without some information regarding self-identification, especially in an ambiguous case. A survey which did not state Obama's self-professed race would return with a much greater number of non-answers, not the 2% of whites, 3% of Hispanics, an 0% of black people who answered “Not Sure” if responses were based on self-identification.

### **Building Agreement Through Dialogue**

The two years following that Williams Identity Survey saw enormous direct and indirect public discussion of Obama's race, including over thirty thousand newspapers articles in which Obama was named racially.

**Table III. Articles Mentioning Barack Obama With and Without Racial Descriptors**

	Obama	W/Black	'African Americ	W/Biracial	W/Multiracial	W/Mixed Race
July 2006	315	52	23	0	0	0
August 2006	414	87	56	0	0	0
September 2006	571	110	82	0	0	0
October 2006	940	213	137	5	5	1
November 2006	1440	336	190	0	0	9
December 2006	1673	313	181	12	1	3
January 2007	3059	583	367	14	10	17
February 2007	3521	938	669	34	20	18
March 2007	3488	764	392	33	14	6
April 2007	3371	688	329	21	12	6
May 2007	3525	573	308	14	6	9
June 2007	3438	511	268	0	7	5
July 2007	3651	636	321	4	2	3
August 2007	3493	478	211	18	2	3
September 2007	3454	447	227	8	2	0
October 2007	3908	609	295	13	1	2
November 2007	3706	450	225	12	12	6
December 2007	5628	802	396	19	4	11
January 2008	13804	3596	2221	71	37	20
February 2008	18048	3833	1880	52	42	22
March 2008	15025	3661	1892	72	48	49
April 2008	13369	2432	1216	25	31	20
May 2008	12636	2515	1162	47	24	26
June 2008	14376	2914	1435	55	29	39
July 2008	12923	1989	948	44	24	26
August 2008	18220	3105	1642	75	43	40
September 2008	20501	2269	956	52	10	20
October 2008	27982	3904	1777	91	49	48
November 2008	37771	7068	4109	217	102	97
December 2008	24463	2582	1286	36	32	23
January 2009	54168	8148	5609	223	96	112

The final six months of 2006, as Obama first became a possible presidential contender, saw a steady rise from 315 to 1673 monthly articles discussing him in some way. Roughly 34% of these articles contained some racial descriptor. January 2007 saw the number of articles mentioning Obama nearly double to 3059, and the level stayed relatively stable – between 3000 and 4000 articles – through November, with a December jump to 5628. A smaller percentage, 27% percent, mentioned race in some way in 2007. As the Democratic primaries moved toward a



competitive end and the general election ramped up, the number of mentioning Obama again ballooned, to 13804 in January 2008, and maintained or exceeded that level from that point on. Mentions peaked at 37771 the month of the general election and 54168 the month of the inauguration. Over this period, from January 2008 through January 2009, 27% of articles that mentioned Obama contained a racial descriptor.

**Table IV. Articles Mentioning Barack Obama With Combined Racial Descriptors**

	Obama	W/ Black and/or African American	W/ Biracial, Multiracial and/or Mixed
July 2006	315	75	0
August 2006	414	143	0
September 2006	571	192	0
October 2006	940	350	1
November 2006	1440	526	9
December 2006	1673	494	3
January 2007	3059	950	17
February 2007	3521	1607	18
March 2007	3488	1156	6
April 2007	3371	1017	6
May 2007	3525	881	9
June 2007	3438	779	5
July 2007	3651	957	3
August 2007	3493	689	3
September 2007	3454	674	0
October 2007	3908	904	2
November 2007	3706	675	6
December 2007	5628	1198	11
January 2008	13804	5817	20
February 2008	18048	5713	22
March 2008	15025	5553	49
April 2008	13369	3648	20
May 2008	12636	3677	26
June 2008	14376	4349	39
July 2008	12923	2937	26
August 2008	18220	4747	40
September 2008	20501	3225	20
October 2008	27982	5681	48
November 2008	37771	11177	97
December 2008	24463	3868	23
January 2009	54168	13757	112

And as Tables III and IV show, the percentage of newspaper articles describing Obama as

something as multiracial, biracial, or “mixed race” - something other than “black” or “African American” - remained essentially flat over the course of the campaign. Throughout the period analyzed, these descriptors were employed extremely sparingly in articles in which Obama was described racially or simply discussed more generally. No consensus about his *non*-black status ever formed. The small minority, however, never disappeared; and the number did flare up slightly in February 2007 and early 2008. But as we can see from the graph below, the deviation of the use of these non-black descriptors from the average month is very small. And when we correct the numbers to account for articles which really don't describe him racially, especially articles referring to multiracial crowds around the inauguration, we see almost no descriptions of Obama as something other than black or African American as the election approached.

Coding also shows at least diminishing certainty among those journalists and newspapers initially naming Obama as something other than black. In 2006 and 2007, nearly all articles in which Obama was labeled “biracial” contained no other racial labels. But by mid-2008 through Inauguration Day, nearly all of the articles sampled in which Obama was labeled as “biracial” included a second labeling as “black” or, less often, “African American”.

And that is the direction in which the public's understanding of Obama's race went. While the Williams Identity Survey never again asked respondents their opinion of the president's race, the Pew Research Center surveyed opinions of the president's race in November 2009, a year after the general election and following the intersubjective dialogue I have discussed. Direct comparisons are difficult, as Pew did not provide the rules-based priming information included in the Williams Identity Survey. More, the question simply asked, “Do you mostly think of Obama as a black person or as a person of mixed race?” Not only did this eliminate the variations in mixed race categories, it completely eliminated “White” as an answer choice,

showing the extent to which the possibility had been excluded over the previous three years. Still, the Pew survey found black, white, and Hispanic respondents all more likely to describe Obama as black than the Williams Identity Survey had found. This marked increase in those describing Obama as black over a two year span does not, as it might superficially seem, mean that more people simply learned the “right” answer, as no “new” information permitting better application of the rules came to light. Instead, it literally means that Obama became black within the national public sphere over that time.

My theory of dynamic nominalism claims that the making of blacks individuals through naming makes the real world consequences of blackness available. As discussed in Chapter One, these attendant effects can be both good (e.g., solidarity), bad (e.g., explicit racism) or neutral. If dynamic nominalism is right, major events which require Obama's blackness would follow rather than precede up-ticks in the rate and number of uses of black as a descriptor. And we do, in fact, see that in the data. The concretizing of Obama's race made different sorts of racialized discussions and effects more possible, rather than the events leading to increased labeling as black. These moments, discussed below, are obviously not directly caused by the preceding increase and cohesion in the naming of Obama's blackness. But the racial connections and stereotypes on which they rely are more available and more likely to be employed with a solidifying intersubjective agreement on Obama's blackness.

The best example of this correlation between naming Obama as black and the racialized effects is the controversy surrounding Obama's membership in Trinity United Church of Christ, a church with a supposedly black nationalist ideology. On March 13, 2008, ABC News published a report entitled “Obama's Pastor: God Damn America, U.S. to Blame for 9/11,” which kicked off a storm of controversy about the views of the church's pastor, Reverend Jeremiah Wright, and

whether Obama himself was a black nationalist critical of America. Major discussions followed on whether Obama cared more about black than non-black Americans, or even whether he was an anti-white racist.

As the Figures I, II and III indicate, it is in the two months *prior* to the Wright controversy, and not the months following, that we find an increase in the raw number of about Obama in which he is described as black. There is also an increase in the percentage of articles mentioning Obama which do so. And there was even a rise in the rate at which that percentage was increasing.

Dynamic nominalism would expect the attendant effects of blackness to occur only after at least the beginnings of an intersubjective agreement on race existed. And that is exactly what we see here. The controversy over Wright, and Obama's link to black nationalism, came only after months of increase in both the raw number of articles describing Obama as black and the rate of articles describing him as such. The attendant effects of blackness – this racialized critique – came only after the media and public had begun to solidify their naming of Obama's blackness. Were Obama's link to a political and cultural blackness the basis for the public's racial naming, as other theories would suggest, the increases would have followed rather than preceded the controversy.

A second clear example comes not with the use of “black,” but with “African American.” At times, I have treated uses of “black” and “African American” to describe Obama as essentially interchangeable. This is because, as mentioned, even though the terms have different meanings and are often applied differently, the media and Obama himself have largely treated the terms as identical. In certain areas, though, separating uses of the two terms is not just

Figure I.

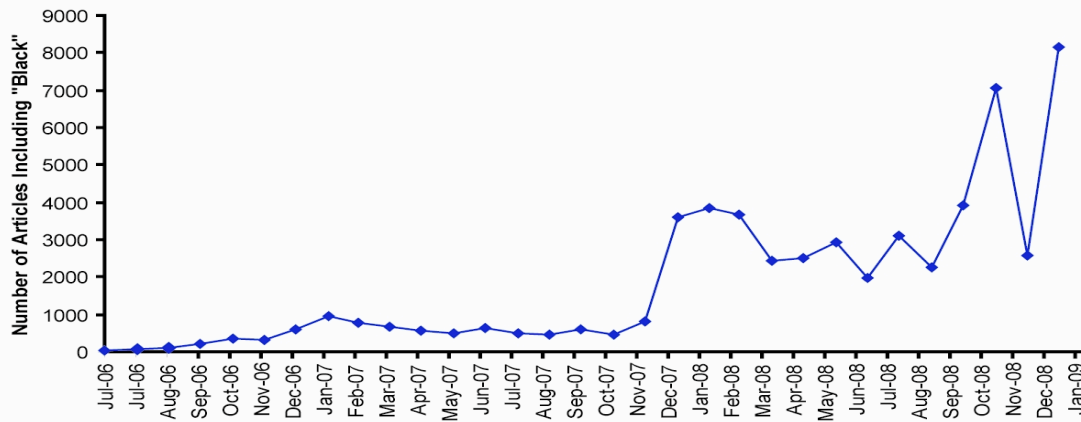


Figure II.

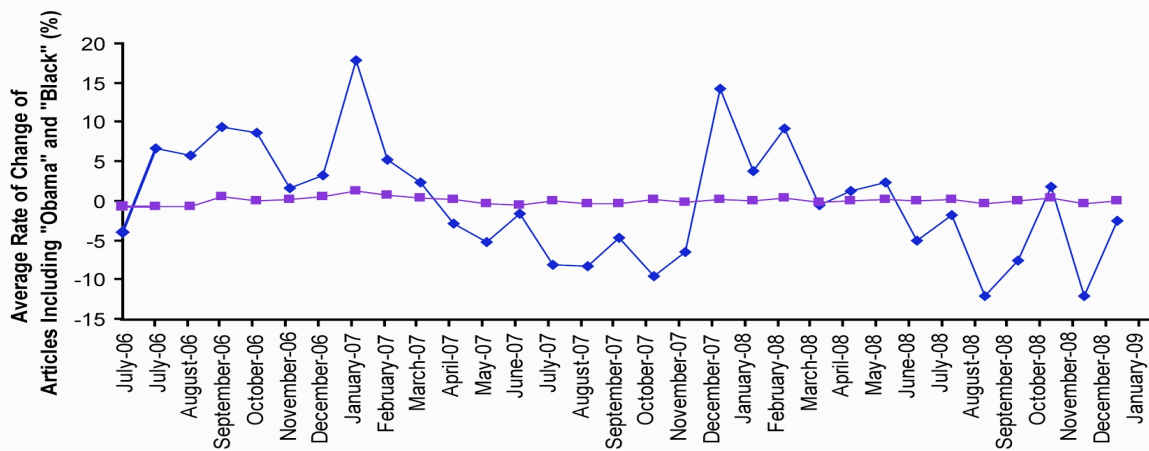
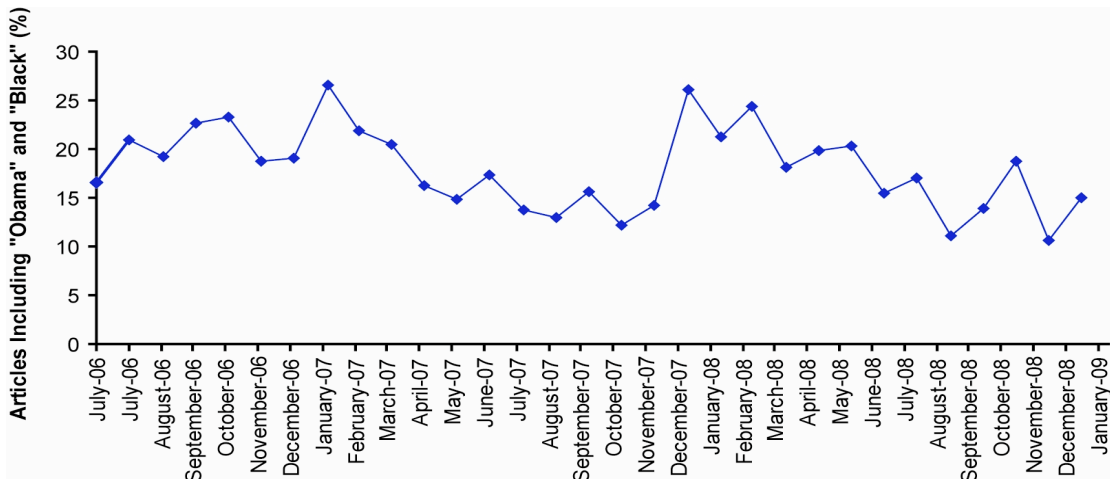


Figure III.



appropriate, but also illuminating. The two terms were designed and continue to describe somewhat different things, and their uses thus have somewhat different effects, including on treatment of Obama as a racialized individual.

From its very first uses, the phrase “African American” meant something distinct from “black”. Those largely responsible for popularizing the term were explicit in describing it not simply as a new way to describe the same identity, but rather as part of the fight for racial uplift and the existence of a differently-defined identity. A switch to “African American” would replace a racial identification with a cultural one, eschewing skin color for cultural heritage and ancestry. As Ramona Edelin, then President of the National Urban Coalition observed, “Calling ourselves African-Americans is the first step in the cultural offensive. Our cultural renaissance can change our lot in the nation and around the world.” More than a self-redefinition, there was an explicit desire to (re)connect to people of color across the globe. Dr. Dorothy I. Height, then President of the National Council of Negro Women, spoke about *African American* in the context of “[making] a united effort to identify with our African brothers and sisters.”

While survey respondents often self-identify as black or African American interchangeably, Randall Kennedy (2005) notes that, “there are many who attach considerable importance to fashioning what they deem to be an appropriate label,” and this sort of reasoning extends well past academics and politicians. Researcher John Baugh (1991) led side-by-side scientific and unscientific surveys, and found that nearly half of individuals preferring “African American” to “black” cited an identification with Africa. Over one quarter of those disapproving of the shift in terminology did so because they felt their own identification with Africa lacking. And in the 1982 General Social Survey, prior to Jesse Jackson boosting the popularity of “African American,” 83% percent of respondents who labeled themselves “Afro-American,” a

very similar term, listed African ancestry. Among those with preferences other than “Afro-American,” just 53% percent named Africa.

Some in the press did consciously make the distinction in regard to Obama. For example, an April 2008 *Guardian* editorial claimed, “Barack Obama is not black; he is biracial and in the most literal sense of the term, an African-American.” But use of “African American” varied widely across the campaign. “African American” appeared in articles at a rate 70% that of “Black” in February 2007, but the proportion fell to under 30% just two months later, before rising to over 50% again the following month. Use of “African American” in articles mentioning Obama never found a consistent level.

In July 2008, a simmering discussion about Obama's American citizenship and Constitutional right to run for president emerged from the Internet and into the mainstream press. Obama's identity as a native-born American was discussed and called into question in what is often described as one of the most “racialized” moments of the entire campaign. But that month saw no new revelations about Obama's birth, birth certificate or citizenship. All of the facts surrounding the controversy, up to the way in which Hawaii handles certificates of live birth, had been readily available – and known by some in the press – since prior to Obama's entry into the presidential campaign. Lonely articles on the “controversy” surfaced as early as March 2007 in the *Hartford Courant*, and “birthers” received their first mentions late that year, with little to no national notice. The meme, however, had not taken among the press or public. Only nine months later did claims about Obama's citizenship become a national phenomenon.

Among the differences between late 2007 and June 2008 is that the emergence of the birth certificate story as a major political event followed several months of sustained use of the term African American – slightly higher than the rate of increase in the use of the term black –

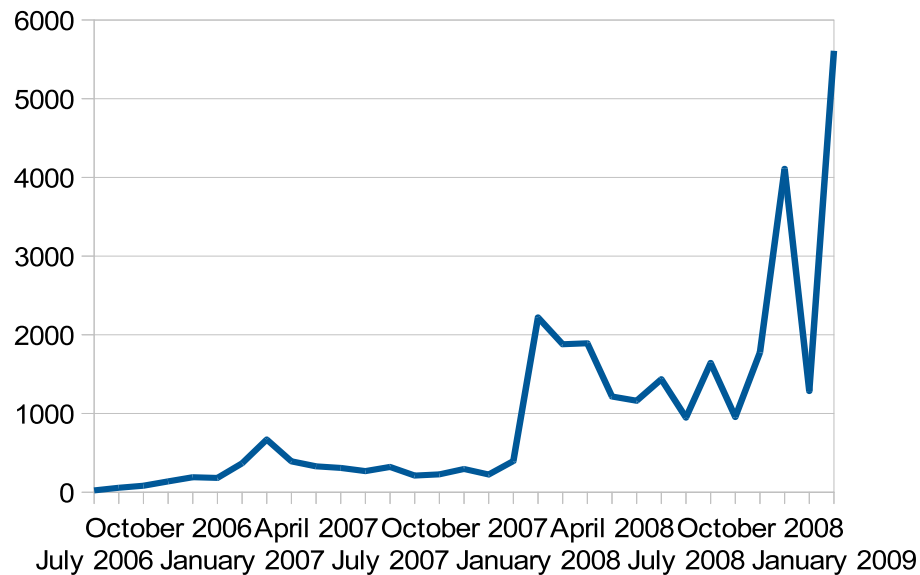
and a decreasing rate of use of all other terms. As Obama was increasingly named as African American in the press (seen in Figure IV), a shift not seen in the general use of the term across the entire universe of newspaper articles, he literally took on this identity and became open to the attendant racialized treatment. While the evidence is correlative and perhaps not causative, most alternative philosophies of race would predict that facts questioning Obama's American identity and promoting his foreignness would lead to greater descriptions of him as someone both American and foreign, something the term African American captures to some extent. And yet July's spike in discussions of Obama's citizenship saw a significant dip in use of the term African American to describe him, both in raw numbers and in the percentage of articles using the descriptor. Articles discussing Obama's birth certificate jumped from 38 in June to 139 in July and 200 in August, even though July saw a significant *dip* in the application of African American to Obama. In fact, and as dynamic nominalism would expect, increased labeling as African American in both rate and number increased in the two months *prior* to the controversy. The intersubjective dialogue naming Obama as African America had occurred, allowing attendant racial effects to take hold.

The solidifying of a consensus on how to name Obama black or African American – or, at least, not biracial, multiracial, or white – that allowed for the citizenship and Trinity Church might help to explain the decrease in the percentage of articles describing Obama as black. While the raw number of articles describing Obama as black continued to rise, the percentage of articles doing so dipped in late summer 2008. This decrease can fit well with dynamic nominalism. Once an intersubjective consensus is reached, or nearly reached, the dialogue becomes less necessary. We should thus expect that as the media and nation came closer to a consensus on Obama's race, the rate of articles discussing him racially would decrease. The increase in November 2008



through January 2009 would then be explained by discussions of a first black president rather than solely as part of the intersubjective dialogue naming him black.

**Figure IV. Articles Mentioned “Obama” and “African American”**



The analysis above applies regionally as well as it does nationally. Data regarding the individual newspapers covering various regions did not significantly differ from the data collected through the “US Newspapers and Wires” group. Each of the newspapers shows similar shifts in the use and rate of racial descriptors. The primary noticeable difference is that the shifts in the use of terms to describe Obama were initially temporally staggered across regions. The content of the intersubjective dialogues was similar, but staggered primaries and differing regional interest in Obama meant the dialogues did not always occur simultaneously and were somewhat self-contained. This lends support to my contention within dynamic nominalism that each new context sometimes means a new and separate making of an individual's blackness.

### **Disagreement and Alternative Conceptions of Blackness**

That prior to this dialogue there was solid disagreement over whether or not Obama is black should cause at least initial skepticism toward some of the alternative philosophies of blackness. Most obviously, the available facts that would have satisfied most rule-based definitions from Du Bois to Outlaw would have been obvious. Mills's seven possible candidates for rules of ancestry – bodily appearance, ancestry, self-awareness of ancestry, public awareness of ancestry, culture, experience (perhaps of oppression), and self-identification – were all met, to varying degrees, almost immediately. Obama's phenotype, while ambiguous, has marked him as black to many Americans. Obama, himself, has said as much, remarking more than once that his blackness has been assumed by classmates and cab drivers. His ancestry included a black African father, though not American slaves, a fact he was well aware of and about which he had written extensively. And public awareness of his ancestry tightly accompanied the first awareness of Obama the candidate. While Obama's connection to black culture and his experience of race-based oppression might have initially been ambiguous or somewhat unknown, it is obvious from Mills and our discussion in the first chapter that these two possibilities are insufficient to be determinants of blackness.

Even if these rules were meant to somehow include Gooding-Williams's distinction between being black and being a black person, or at least Dickerson's similar need for cultural and political commitments to the African American community, Obama's professional experience, political commitments, and explicit commitment to a form of racial solidarity would surely have satisfied the conditions. Politically, Obama received a perfect 100% score from the National Association for the Advancement of Colored People, “which grades members of Congress on their support for its agenda” (*Time Magazine*, Dec 2007). And if Gooding-Williams requires conscious thought and declaration and not just action – i.e., the reasoning matters – then

the group solidarity to which he explicitly signed on in *Dreams From My Father*, (1995) would have been enough. And, as alluded to by *New York* magazine in “The Racial Politics of the Obama Marriage” (8/10/2008), perhaps nothing has done more to bolster his black “credentials” than his marriage to Michelle Obama. His choice to marry a “strong,” black woman with unquestionable racial bona fides likely helped to “re-assure” many black people. Dickerson herself made a similar argument in *Salon*, writing, “Also, and more subtly, when the handsome Obama doesn't look eastern (versus western) African, he looks like his white mother; not so subliminally, that's partially why whites can embrace him but blacks fear that one day he'll go Tiger Woods on us and get all race transcendent (he might well have never been in the running without a traditionally black spouse and kids).”

Because information sufficient to apply rule-based determinations was known from the moment of Obama's entry into the national discussion, proponents of rule-based definitions of blackness would expect one of two possible findings. The first, and more likely, would be a large consistency in the use of racial descriptors across the various media, across surveys, and across time. While slight regional variation in socially-accepted rules would be plausible – for instance, due to the legacy of slavery and interracial parentage in the South, or greater West Indian immigration in the Northeast– the dominant rule-based theories in the tradition of Du Bois all posit a fully national public context and agreement over the appropriate rules. Aside from the unlikely event that the relevant rules or their proper application dramatically shifted over a two-year span, or some great ambiguity surrounding the facts about Obama's life and how they match up with these rules, the rate of each descriptor would be unlikely to change.

The second possible outcome would be a shift in the use of racial descriptors following the discovery or publicizing of new race-related facts about Obama. Only when new information

makes a reevaluation of the rules necessary would we see shifts in racial descriptors. To test that possibility, we can identify several moments during the campaign when one could plausibly argue that new and sufficiently game-changing facts about Obama's race became known. One would expect that the shifts in racial descriptors seen would follow these moments, perhaps with a slight lag. Comparing major events in the campaign to the most commonly accepted rules of blackness, including ancestry, phenotype, and experiences, several possible candidates for these moments can be identified.

But, as we saw, the data support neither of these possibilities. First, as Tables III and IV indicate, the use of all of the racial descriptors fluctuates over time, even without any factual revelations. As for the second possibility, the discussions of the Reverend Wright and birth certificate controversies above show that the major racialized moments of the campaign preceded a drop rather than rise in the use of the descriptors attached to the treatment.

As mentioned, eliminativist theorists would likely not consider an empirical test. A political position, it allows for individuals to reject racial naming altogether, and is not meant to be descriptive. Everyday, millions of Americans are assumed to be, and are treated as, black without consideration or knowledge of their possible racial rejection. It is unlikely that even a proponent of eliminativism would claim that an individual's rejection of all racial descriptors or categorization in her self-identification would currently be fully accepted. But empirical data can start to indicate whether it is actually a “non-starter” in today's America even as a political stance.

Testing Zack's eliminativism through coverage of Obama is somewhat more difficult, as Obama did not take an eliminativist stance either prior to or during the campaign. In fact, Obama strongly implied that he learned at an early age that such a stance would not have been respected,

telling Steve Kroft in a “60 Minutes” interview, “Well, I’m not sure I decided [I was black]. I think, you know, if you look African American in this society, you’re treated as an African American.” Obama's later claim to Charlie Rose that, “If I'm outside your building trying to catch a cab, they're not saying, 'Oh, there's a mixed race guy” implies a similar skepticism. And Obama has said that the naming is what led to his sense of identity, and not vice versa, stating, “I identify as African-American — that's how I'm treated and that's how I'm viewed. I'm proud of it.”

The closest that Obama came to taking an eliminativist stance was claiming that he wished to run a “race-neutral” campaign, in which his race and that of other candidates would be largely ignored and considered irrelevant. He re-emphasized the stand even in his Philadelphia speech on race in the wake of revelations about Obama's pastor, Reverend Wright. And yet tens of thousands of articles were written about Obama's race and/or describing him racially, often when that race was irrelevant to the article's content.

Eliminativism's promise, however, can be tested hand-in-hand with self-identification. eliminativism is essentially self-identification as a non-racial being. It is deference to the individual's choice of race, or no race at all, as the case may be. The extent, then, to which an eliminativist stance would be accepted as Obama's (non-)racial identity would be no more than – and almost certainly much less than – the extent to which Obama's actual self-identification drove the media's description and the public's understanding and treatment of his race.

Were such an eliminativist or self-identification-based stance respected by the press, we would expect early media reports to largely eschew racial descriptors, or to at least attribute the descriptors to Obama's own words. Information on Obama's preferred descriptors was widely available. For instance, Obama's first memoir, *Dreams from My Father*, was required reading

among political journalists by the time most of these discussions occurred. Obama described himself as black and not biracial throughout the book. In recounting his Senate campaign, for instance, he wrote, “A black with a funny name, I am not going to get many chances.” And when that campaign succeeded, Obama joined the Congressional Black Caucus, an organization whose full membership is exclusive to black members of the House and Senate. Gary Kamiya, in an article actually labeling Obama as biracial, summed up Obama's self-identification nicely, writing, “He took the hard road. For whatever reasons – his absent African father, his relation to his mother, the identity traps and distortions thrown up by America's racist history, his own unique DNA – he chose to self-consciously affirm his identity as a black man. He agonized over what it meant to be a black American. He feared being seen as a sellout. In an attempt to find out what blackness was, and by extension what he was, he threw himself into the black community, working as a community organizer in Chicago. He was driven by a primordial quest: to find out who he was, and to become that person.”

Still, from the start, we see media reports labeling Obama racially with no reference to the man's own choices, although perhaps these choices were driving some of the reports. Self-identification's impossibility as the dominant consideration is obvious in the simple existence of this discussion, and the short-shrift Obama's own words receive in the metadiscussions. At the least, articles describing Obama's race would be dominated by references to Obama's own declarations, or at least to individuals explicitly or implicitly authorized to speak for him, including campaign spokesmen. The claims of all others would be largely ignored. But as the coding data show, self-identification is one of the least-used defenses used in both news articles and editorials. Because these articles explicitly discuss what factors influence racial determination, it is unlikely that self-identification is simply implicit in the discussions.

Additionally, self-identification as a basis for racial descriptions would likely increase following moments during the campaign in which Obama publicly proclaimed, or at least heavily implied, his identification as black. Among Obama's most public professions of his racial identity during the campaign are the 60 Minutes interview just mentioned and the publication of his second book, *The Audacity of Hope* (2007). But as the word counts and rates show, no increase in attribution to self-identification followed these professions.

Similar to the media representations, the early conclusions of private individuals largely ignored self-identification. Priming information on Obama's self-identification would have been required were self-identification truly of dominant import. Surveys, however, did not even bother to include any information on Obama's self-identification. The information was been seen as extraneous to Zogby and others. And to respondents as well. As alluded to in the above discussion of voluntarism, the descriptions provided, which included no information about Obama's self-identification, still found, in the case of the Williams Identity Survey, 98% of respondents confident enough that they could determine his race. Those who would support racial categorizing based solely on self-identification or a refusal to identify racially are likely a subset of the 2% who replied “No Race”. More concretely, hundreds of everyday readers sent emails and letters to television stations and newspapers forcefully naming Obama as black, white, biracial, multiracial, or none of these. These letters and the results of the polling overwhelmingly show that the American public would not respect an eliminativist – or any self-identification-based – stance.

Unfortunately, population naturalism, which depends heavily on empirical evidence, cannot be evaluated from the data here. As a single individual without known race-specific medical issues, Obama can do little to validate or invalidate population naturalists' approach. The

above data can deal only peripherally with whether Obama's racial descriptor improves our understanding of biology or doctors' ability to treat his health. The more theoretical critiques of Chapter One will have to be largely sufficient. But it bears repeating that population naturalists would agree that their definitions of race and blackness should be judged largely on whether they accurately describe something from which we can make use.

## **Conclusion**

The above analysis demonstrates that dynamic nominalism is the philosophical explanation of American blackness that best matches our empirical observations. I cannot definitively claim causation in claiming that naming Obama as black made him a black man thus opening him up to attendant effects. But correlations in the data and the order in which naming and events occurred make this a better explanation than other alternative philosophies of race. Taken alongside the theoretical advantages argued in Chapter One, the dynamic nominalism of blackness must be taken seriously in discussions of racial identity and race-related policy in the United States. In the following chapters, we will see how this might be done.



## **CHAPTER THREE:**

### **THE STATE AND THE CENTRALITY OF BLACK IDENTITY**

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#### **Introduction**

In the first two chapters, I defined and defended a definition of blackness based on intersubjective naming and the role those names play in people's lives. The focus was on individual interactions and media representations, and showed dynamic nominalism to be the way in which American blackness is literally created. In this chapter, I will look more closely at the United States Government's role in this process. Government has had and continues to have an enormous voice in this intersubjective dialogue, and that role must be understood. More, I will argue that the state's authorship of blackness, through its dominant place in dynamic nominalism, gives it a normative responsibility to consider its ascriptive role and what abdicating this role would mean for blackness and black people. This includes, but is not limited to, maintaining blackness as an available identity choice in important interactions between individuals and the state. To do so, I will show the importance of a dynamic nominalist conception of blackness in people's lives and what a lack of government recognition would do to the sense of self and psychological well-being of millions. Essentially, I will use available survey data and empirical evidence to demonstrate that blackness is a crucial "hypergood" and that government's role in making it so requires continued support of an available black identity.

#### **Group-Based Identities**

As individuals, we are defined by our identities. And these identities are defined by a particular set of constitutive goods – a unique set of beliefs, values, morals and preferences – that

distinguish us from all others. And in turn, those beliefs, desires, morals and actions create a narrative of the self. As Kwame Anthony Appiah (2005, 278) writes along these lines, “narrative patterns associated with identities help people shape their lives.” Without a recognizable identity we are lost, unable to maintain a healthy sense of self, have self-respect, and make the choices that determine our futures. And so Charles Taylor (1989) argues that identity is the defining issue of our age, as it constitutes the sustaining moral framework from which all of our important life choices are made. While liberalism brought with it the idea that there is no single good life, the common belief remains that there are still specific good lives more appropriate than others for particular individuals. It is our identity that guides us to the appropriate one. While this conception of identity is not without its Marxist, communitarian, and utilitarian critics, Appiah (1996, 97) argues in another piece that this condition, “is not just a point about modern Westerners: cross-culturally it matters to people that their lives have a certain narrative unity; they want to be able to tell a story of their lives that makes sense. The story—my story—should cohere in the way appropriate by the standards made available in my culture to a person of my identity. In telling that story, how I fit into the wider story of various collectivities is, for most of us, important.” At the very least, this narrative particularity remains the dominant interpretation of identity in the United States.

This identity and moral sense is not merely found internally to the individual. There is general agreement that individual identity is (at least partially) determined by the group with which the individual identifies and is identified, as group categorization and norms are major constituents of individual identity. As Iris Marion Young (1990, 45) puts it, “Groups...constitute individuals. A person's particular sense of history, affinity, separateness, even the person's mode of reasoning, evaluating, and expressing feelings, are constituted partially by her or his group

affinity.” And according to Amy Gutmann (2003, 15), “How people identify themselves [is] the distinctive organizing feature of identity groups...”

This anti-atomistic position is not necessarily inconsistent with traditional liberal theory. For example, it might be akin to the distinction John Rawls (1971) makes between interest in a self and interest of a self, the latter a necessity and the former not. As he writes, “While [rational long-term] plans determine the aims and interests of a self, the aims and interests are not presumed to be egoistic or selfish. Whether this is the case depends upon the kinds of ends which a person pursues...There is no inconsistency, then, in supposing that once the veil of ignorance is removed, the parties find that they have ties of sentiment and affection, and want to advance the interest of others and to see their ends attained.” Charles Mills (1997, 127-8), though, discusses skeptics who would likely believe that an interpretation of this sort does not go far enough. To them, the liberal idea that human reason and preferences are individual might itself be incorrect, with understanding of the right and the good being inseparable from the histories and agendas of particular communities. So the anti-atomistic position need not be rejected by supporters of liberalism, but might still imply a necessary shift to a collective rather than individual focus.

Both sociological and psychological research provide some initial reason to believe that such a collective sense of self is more than theoretical. Pierre Bourdieu's (1984) empirical research on French society indicates that boundaries and distinctions between groups cause group members to define themselves through the preferences and behaviors of the group. And Henri Tajfel and John Turner (1979) provide empirical evidence for their self-categorization theory, claiming that more than simply being influenced by her group, the individual sees herself “an interchangeable exemplar of some social category.” Not only can the self never be fully differentiated from the group, it is the group. Accepting the theory and data could mean

following Gutmann's (2003) argument that, "The dichotomy posed by some political theorists between atomistic and socially constructed individuals is...a false one. "

These group-dependent identities are not simply assigned and accepted, forever unchanging. Instead, as Taylor (1989) claims, "The crucial feature of human life is its fundamentally *dialogical* character. We become full human agents, capable of understanding ourselves," (32) only through interaction with significant others. It is these discussions and relationships – primarily discussions with members of both our in-group and outgroups, but also internal contemplation – that define our identities. Identity cannot be made in isolation, and "depends crucially on my dialogical relations with others." (34) As Stephen Epstein (1987) describes it, "Identity is constituted relationally, through involvement with – and incorporation of – significant others and integration into communities." (Epstein 29) And these are actual and not just theoretical dialogues in which we create our identities through our relationships with others. As social identities have no reality outside of the perceptions of social actors (Dominique Labbe), the actual dialogue creating those perceptions is extremely important.

The dialogues creating identity greatly resemble the dialogical character of the definition of blackness I theorized in Chapter One and detailed in Chapter Two. There, dynamic nominalism involves both internal and external dialogue about how individuals should be categorized. The back-and-forth of naming – sometimes immediate and nearly unconscious, at others extended and public – results in the creation of black individuals who constitute and are constituted by the group. The creating of a black identity through a dynamic nominalism is thus not only in line with these theories of identity, but is nearly paradigmatic. Later in this chapter, we will see examples of this dialogue between black individuals and government helping to create and recreate blackness as an identity.

As Taylor reads at least European history, appropriate identities and group status were at one time obvious or unchangeable. Individuals were born into religions, castes, and races and could hardly contemplate changing their received identities. Social position was wholly determinate of identity. The Enlightenment, Modernity, and the attendant weakening of hierarchical society, however, brought a new world. Taylor presents a modernizing Europe in which Christianity is a dominant, though perpetually under-attack identity, as a moral relativism eliminated Christian doctrine's status as a hypergood in many people's lives. There, he finds people adrift, unhappy, lacking in self-respect and sense of self, and searching for a new authenticity.

### **Hypergoods**

In their search for meaning and authenticity, individuals sought new out new identities and new hypergoods. And while Taylor's preferred identity is obviously still Christianity, and its “immutable” beliefs his preferred hypergoods, he acknowledges that other, unchangeable or unchanging anchors might also act at once as identity and hypergood. He finds a rigid form of culture – inspired by Herder's argument that a people has an inherent way of being and must be true to itself – to be a dominant replacement. Among the other alternatives Taylor suggests are non-Christian religions, Platonism, and, most interestingly, the Kantian imperative. Any immutable anchor ideology, philosophy or religion might work.

Those anchor identities are themselves maintained and anchored by what Taylor terms hypergoods. Hypergoods are the higher-order goods to which individuals refer when making important life decisions, and they become the defining characteristics of group and individual identities. When determining needs, wants, and desires, hypergoods provide a referent that

allows individuals to make the moral decisions that are consistent with their particular conceptions of the good. It is this moral sense that separates us from the utility-maximizing individuals that populate the equations of economists and rational choice theorists, and instead allows us to make decisions that are appropriate for who we are rather than for some other individual in our same position. They ground and guide us, particularly in the choices that most affect our life chances. Their relatively unchanging status also provides the consistency by which we can create a consistent narrative of the self, and maintain a sense of who we are. Hypergoods are inseparable from identities, as the defining characteristics of the group are the defining characteristics of the individual.

Taylor (1989, 63) sometimes describes hypergoods as “second-order qualitative distinctions” that permit discrimination between goods and desires. They are not, however, merely what Harry Frankfurt (1999) calls second-order volitions, or the desire to desire something. Though Appiah (2005) picks up Frankfurt's language, the difference between hypergoods and regular goods is not simply one of order, but one of kind. Hypergoods are incommensurable with regular goods, as they are “not only are incomparably more important than others but provide the standpoint from which these must be weighed, judged, decided about” (Taylor 1989, 63). Where second-order volitions are easily changed – and sometimes even subject to third-order volitions – hypergoods are practically constant, and essentially unchangeable by single individuals. And these aspects are crucial, as it is the largely-static nature of hypergoods that allows them to anchor identities and maintain the narrative of the self.

It might initially appear that the changing and historically-dependent existence of blackness makes it a difficult candidate for an immutable good. The very existence of blackness is a historical accident. Cornel West (1982), for example, is able to point to several historical

accidents – the particularities of Greek aesthetics and the Enlightenment focus on observation and categorization, among them - without which race might never have existed. And the past century has seen an increasingly successful academic attack on blackness as a stable or even extant category, as dominant theories of race have moved from biological essentialism, to various versions of social constructionism and even a complete rejection of the existence of any and all races. Even the number of races recognized in America has shifted multiple times, from the eight to twelve races argued by W.E.B. Du Bois (1897 and 1903) to the five currently offered on most government forms. If races can appear and disappear with the stroke of a pen, it might superficially seem that blackness cannot serve as a permanent reference point.

Blackness's relatively recent historical birth and its appropriateness to only a particular people do not, however, undercut its status as a hypergood. As Taylor writes, hypergoods come in and out of being over history, with one rejecting or building upon the previous, often as replacements for inadequate views. Platonism, for example, superseded “the Homeric-inspired honour ethic,” and was later replaced itself. And the Judaeo-Christian religious tradition replaced both idolatry and polytheistic religions. Race's status as a social construction, and blackness's defining characteristics being unique to both time and place, do nothing to stop individuals from looking to them as quasi-permanent higher goods which will guide their actions for a lifetime.

Nor does the fact that the structure and content of blackness is not fixed make it an inappropriate candidate to be a hypergood. Even those who argue for the existence of blackness, as I do, acknowledge its changing content and ideological structure. The content of racial categories, especially of the ideologies that are associated with races, have never been fixed. The largely-Democratic present only masks a black political history defined by debates over the proper actions and ideologies of the group. The very public disagreements between Du Bois and

Booker T. Washington, Marcus Garvey and Du Bois, and Martin Luther King, Jr. and Malcolm X, are just the most prominent examples. The ideological content of blackness has always been debated in counter and sub-altern public spheres, and, as Melissa Harris-Lacewell (2004) has detailed, continues to be today. Even who is considered black has constantly shifted, while no definition of blackness has ever had near universal support. And yet, the category of blackness has maintained.

As our identities are created in relation to others, so must be the crucial affirmation of those identities. Relationships with others come to be the “key loci of self-discovery and self-affirmation” (Taylor 1989, 36). It is likely because of the dialogical nature of both identity creation and affirmation that the theoretical debate is dominated by what is called the politics of recognition:

The demand for recognition...is given urgency by the supposed links between recognition and identity, where this latter term designates something like a person's understanding of who they are, of their fundamental defining characteristics as a human being. The thesis is that our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced way of being (Taylor 1994, 25).

Proper recognition, as opposed to misrecognition or nonrecognition, is crucial to relationship-based identities.

## **Recognition**

Recognition provides a validation of identities and the individuals who hold them. Misrecongition and nonrecognition do real psychological damage, undermining identities and literally producing self-hatred. And with racial and ethnic groups, especially, the damage can be more than psychological. As Mills (1998) argues, recognition “secures the group's status and the



status of its members in the body politic. This recognition secures, as well, the group's rights and privileges, including the right to self-determination, which flow, in significant part, from the group's identity as well as from its members' essential identity with others as humans.” (126)

When the state is aware of nonrecognition or misrecognition inflicting this sort of drama, it is often expected to act, to recognize. Recognition largely occurs through implicit or explicit support for the hypergoods that drive, and are definitional of, minority identities. This support could be monetary, special legal dispensation, or a simple acknowledgment of existence. The particulars vary with the values of the state and the needs of the group. This is largely similar to what Appiah (2005, 298) terms soul-making, “the political project of intervening in the process of interpretation through which each citizen develops an identity with the aim of increasing her chances of living an ethically successful life.”

Perhaps because of this large cultural influence and the modern rejections of essentialism, debates about Taylor's and similar theories generally move at this point to the conflict between majority and minority cultures. Taylor (1994, 25) himself has tended to turn the discussion in this direction, writing that the politics of recognition often equate to “what is today called the politics of 'multiculturalism.'” Group identities are generally assumed to be cultural, and cultural content their hypergoods. And so it is largely on the battleground of cultural recognition that proponents of what Bhikhu Parekh (2000) terms “liberal nationalism,” and Appiah (2005) calls “multicultural liberalism” do their fighting. (Appiah 240)

Will Kymlicka (1995), Gutmann, and other liberal theorists are joined by more communitarian and nationalist thinkers such as Parekh in considering state recognition of minority groups via their culture practices. They ask and attempt to answer questions such as whether a liberal state should permit illiberal practices within minority groups, how to weigh minority desires against democratic processes, what to do

when collective goals conflict with individual rights, and how government can properly recognize those identities and cultural practices it deems worthy.

Most of these multiculturalists follow something akin to Avishai Margalit and Joseph Raz's (1990) definition of culture, which includes characteristics such as language, art and geography. But no culture is static, and none contains any single characteristic that is absolutely necessary, without which the culture would be sufficiently unrecognizable as to no longer exist. At times, culture itself is simply one of a several larger characteristics, such as history and religion – each not necessary on its own – that make up the greater identity. (Lucius Outlaw's (2005) reclamation of Du Bois's “Conservation of Races” through a “cluster” of characteristics works in just this way.)

Discussions of whether specific parts of culture should be recognized or supported thus take on a less-than-existential quality. Instead, debates often resemble moral or practical cost-benefit analyses, weighing support and recognition against its illiberal or anti-majoritarian effects. Classic examples include the Quebecois desire to teach public schools in French, kashrut butchering practices, and the wearing of the hijab. Non- or misrecognition in these cases is rarely considered an existential threat among theorists the way it often is among practitioners. Not even stronger supporters of cultural recognition, such as Parekh, treat the practices that cultures themselves claim to be essential as sacrosanct. His support for a liberal society's choice to ban Islamic practices which many Muslims see as definitional of their religion is one example.

At times, and with certain groups, these theorists do treat specific non-cultural characteristics as necessary to the group. Gutmann (2003), for example, asks whether religion deserves special status because it often contains aspects whose loss would make the religion's practice impossible. Enforcing neutral building codes, for instance, would prevent the

construction of Mormon temples seen by adherents as absolutely necessary for their religious worship. In these rare cases, the debate turns on whether the religious or cultural groups would truly be unrecognizable or pushed out of existence were the practices banned or unrecognized, and then to whether exceptions should be made if this is indeed the case.

Were we to accept the culture-based definition of blackness endorsed by nationalists such as Molefi Kete Asante and Amiri Baraka – and explicitly or implicitly acceded to by theorists such as Gutmann and Appiah – the argument would continue along both of these lines. We would determine how and when the federal government should support “black culture” while minimizing challenges to the majority's desires. My argument, however, is not about multiculturalism, or even culture more generally. Instead, my theory of dynamic nominalism posits a black identity based upon intersubjective placement within the group, and not the particular cultural or political content of the group. Unlike, say, Taylor's Christianity and Quebecois nationhood, my definition of black identity does not contain either inviolable religious doctrine or even clusters of cultural practice. My version of blackness has only its existence as an identity to protect. This allows us to sidestep debates over cultural retention, respect for illiberal cultural content, and the like, and instead examine and defend only the state's role in the intersubjective process, and whether and how it should continue.

It does, however, necessitate a separate project. While the claim that culture-created identities and hypergoods exist is standard, a similar claim about categorization *as* identity certainly is not. I must be able to show that the version of blackness I defend is indeed a both identity and hypergood. And then that state action has an impact on whether it continues to exist. It is to that project that I turn.

## **Blackness as a Hypergood**

The African American Identity Lab at the University of Michigan has sought to empirically determine the importance of blackness in people's self-definitions. The lab uses what it calls The Multidimensional Inventory of Black Identity (MIBI) and the Multidimensional Model of Racial Identity (MMRI), to determine the level of import blackness has for individuals. According to the lab, "The MMRI defines racial identity as that part of the person's self-concept that is related to his/her membership within a race. It is concerned with both the significance the individual places on race in defining him/herself and the individual's interpretations of what it means to be black." The MIBI, meanwhile, is broken up into four categories: Regard, Salience, Ideology, and Centrality. And each contains its own set of relevant statements, with respondents asked to rate their level of agreement on a 1-7 Likert-type scale, from strongly disagree (1) to strongly agree (7). The nine items related to Public and Private Regard, for instance, include statements as, "Overall, Blacks are seen as good by others," and "I am happy that I am black."

In addition to private regard, most relevant here is centrality, defined by the lab as the "dimension of racial identity [that] refers to the extent to which a person normatively defines her/himself with regard to race. It is an indicator of whether race is a core part of an individual's self-concept. Implicit in the conceptualization of centrality is a hierarchical ranking of different identities with regard to their proximity to the individual's core definition of self." Crucially for my content-less version of black identity, the scales, especially centrality, directly measure a content-free blackness rather than any cultural or political version of race. In questions such as, "Overall, being Black has very little to do with how I feel about myself," "Being Black is an important reflection of who I am," and "I am happy that I am Black," the term "Black" went undefined, allowing participants to fill in the content as they saw fit. Blackness was tested as a

categorical identity alone, rather than as cultural or political blackness, as usual.

Surveys and experiments using the MMRI and MIBI have repeatedly shown that blackness is a consistently important part of many black peoples' identities. For instance, researchers from African American Identity Lab asked a sample of 474 college students at a medium-sized historically black university and 293 black students at a predominantly white medium-sized university to indicate their level of agreement with 51 statements covering each of the four categories of black identity. While each of the six categories and subcategories showed a mean of agreement rather than disagreement, centrality and private regard – the categories correlating to the sort of important, content-less identity I posit – showed the highest level of agreement. At 6.25 out of a maximum 7, private regard, happiness with one's black identity, saw nearly unanimous, strong assent. And centrality showed the next-greatest level of agreement, at 5.23, beating out assimilationist, humanist, “minority,” and nationalist ideology measures. More, the lowest level of support was found for nationalist ideology, a result which helps support the notion that racial centrality and the importance of black identity is not merely a political position (Sellers, Rowley, et al. 1997, 811).

In an MMRI-centered longitudinal study of self-identified black youths, Neblett, Jr., Smalls, Ford, Nguyen and Sellers (2009, 194) conducted an “examination of the racial identity variables indicated high levels of agreement with items endorsing racial centrality and private regard” (194). On a 1-5 (instead of 1-7) Likert-type scale, ranging from “really disagree” to “really agree,” the average centrality rating was 3.82, and the private regard rating 4.58, both indicating very strong agreement. Meanwhile, the antithetical position, the “assimilationist ideology assess[ing] the view that Blacks should become more like Whites and emphasize a mainstream American identity over an African American” averaged only 1.73, the lowest level

of agreement for any measure. And again, participants showed only intermediate level of support for nationalist ideology and public regard, showing the importance of black identity to be not only political.

Shelton and Sellers (2000, 41) employed the MMRI to test the importance of racial identity in experimentally-created “race salient” and “race ambiguous” situations. Using the 1-7 Likert-type scale ranging from “strongly disagree” to “strongly agree,” the researchers found that female college students expressed strong agreement with measures of both private regard and racial centrality. The mean private regard score, indicating a happiness with one's racial identity, was 6.41 following race salient experiments, and a nearly identical 6.38 in race ambiguous set-ups. These numbers dwarf agreement with humanist and assimilationist statements in both race-salient and race-ambiguous situations. And the mean racial centrality score of 5.11 in race salient situations trailed only agreement with private regard.

The MMRI and MIBI are consistent with other experimental scales of racial identity. Casey-Cannon, Coleman and Knudston (2011) found significant correlation between results using the MIBI, including its Centrality scale, and results found using both the Multigroup Ethnic Identity Measure and the Collective Self-Esteem Scale-Race. A similar import of black identity has been found using unrelated, competing scales of racial identity. For instance, the Cross Racial Identity Scale (CRIS) measures racial centrality through a 40-question survey, one section of which attempts to determine whether blackness is *the* primary identity. By assessing levels of agreement with statements such as, “I am not so much a member of a racial group, as I am an American”, the CRIS find a level of centrality very similar to that found in the MMRI (Fhagen-Smith, et al. 2010).

Each of these studies and scales provide direct evidence that blackness is a central aspect

of identity. But not only is blackness a crucial aspect of identity, but like all hypergoods, it becomes most salient in life's most important moments. In those situations in which the answer to “Who am I?” is most relevant, blackness is often the guiding good. This becomes clear in cursory look at black history and a review of black public opinion data.

It is obvious that blackness will not have this import for all people who consider themselves and are considered black; but neither does a specific culture or religion touted by Taylor, Kymlicka, and others mean the same thing to all of its members. And as Appiah (2005, 292) discusses, while many Muslims believe that eating only halal meat is necessary to remain a good, practicing follow of Islam, other Muslims do not base their diet around their religion. This, however, has not been a deterrent to government-backed halal labeling.

As my claim is that blackness is only sometimes necessary touchstone, I need not show that blackness is always and for everyone the core identity, but only that for enough people it is necessary during existential moments. The importance of context and priming is relevant here, as it allows for the acknowledgment of a multiplicity of identities, as well as the fact that blackness is not a constantly the determinant of self. Researchers have shown that as the level of perceived out-group threat rises, so does the level of one's identification with an in-group. Marylee Taylor (2000) finds that as the local black population swells, white support for policies that are race-conscious drops significantly, as does support for supposedly nonracial redistributive policies. And Jean-Paul Sartre (1948) details the arrival of other non-whites in *Anti-Semite and Jew*. Moreover, Turner (1999) finds similar import of identity salience and context, as, “Where social identity becomes relatively more salient than personal identity, people see themselves as differing individual persons and more as the similar, prototypical representatives of their in-group category.” Together, all of these findings demonstrate that while salience and strength of

identity might be fluid, the identity can nevertheless be crucial.

There is good reason to believe, however, that the context in which group identity is relevant is much wider for blackness than it is for other identities. This is because the above acknowledgment of group-identity constitution and conflation is especially well-suited to blackness. As an oppressed minority, the connection between individual and collective identity and interests is especially intense. Cathy Cohen (1999) writes that with marginalized groups, especially ascriptive groups such as African Americans, are encouraged by group-based discrimination and resource allocation to think of rights and identities in terms of the group rather than the individual. Michael Omi and Howard Winant (1986) similarly argue that anti-hegemonic social movements and groups, such as blacks, “create collective identity, collective subjectivity, by offering their adherents a different view of themselves and their world; different, that is, from the characteristic worldviews and self-concepts of the social order which the movements are challenging” (88). More theoretically, Mari Matsuda (1987) argues, “Victims necessarily think of themselves as a group, because they are treated and survive as a group.” Similarly, Appiah (2005, 286) finds that as long as race-based injustice exists, black people will maintain a nationalistic sense rather than purely individualistic sense of group identity. The incredible endurance and flexibility of racism and American white supremacy – and perhaps, as Derrick Bell (1992) describes it, their permanence – indicate that the groupness these authors describe will remain necessary.

Moreover, for much of American history, the use of blackness to make important life decisions no matter the context was legally enforced. Decisions on where to live, whom to marry, and where to work, for example, were also severely limited by the state. For instance, the choice of whom to marry had long been curtailed by the state, as the practice was banned for



enslaved black people, and it was not until *Loving v. Virginia* in 1967 that interracial marriage as legal for everyone. When considering nearly every important life choice, black people were legally forced to use blackness as their primary hypergood.

But even with an end of most de jure discrimination, blackness still influences important choices. This is because, as Gutmann (2003, 121) notes, people with ascriptive identities “cannot make sense of their interests completely apart from their particular identities.” Ascriptive identities and interests combine interactively, and “interests cannot be explained apart from a prior identity” (123). As we saw with the group-construction of individual identity above, questions of preference are always asked of individuals already constituted within a specific group. If true, we cannot even discuss the interests of individual black people without discussing the interests of the larger black communities. On a practical level, at least, this means that black Americans continue treat their blackness exactly how one would any hypergood, as a second-order higher good which drives crucial decisions. Rather than attempt to determine what is best for them and how to get there, individuals determine what is best for the group and substitute that for their own interest.

The most prominent evidence for group-individual identity conflation in black preferences is seen in Michael Dawson's (2001) theory of the Black Utility Heuristic. According to Dawson (1994), when black people attempt to make important ideological decisions such as which candidate to support or policy to advocate for, they turn to their blackness for guidance. Using responses to the National Black Politics Survey, Dawson finds that the costliness of information gathering has led a majority of black people to “substitute racial-group interests as a reasonable proxy for self-interest because information on racial-group interests was and is readily available and cheaper than information about one's own, unique situation.” (xi)

According to Cohen, this is a feature of all marginalized groups constituted by ascriptive identity, because in ascriptive groups such as African Americans, “The personal and collective survival of group members, or community linked fate, becomes the framework through which actions are evaluated, replacing the individual calculus of dominant group members popularized by political scientists.” (40) Thus, the heuristic works largely because of the overdetermination of race in black peoples' life chances. The belief in this sense of “linked fate,” as Dawson calls it, is about seeing one's life chances inextricably bound to those of the entire group, in this case black Americans.

Dawson (2001, 78-9) measured linked fate through the National Black Election Panel Study (NBES), which asked, “Do you think that what happens generally to the black people in this country will have something to do with what happens in your life?” In every year the question was asked, a wide majority of respondents said yes . “Group-based politics have developed historically,” he writes, “to such a degree that many African Americans' political preferences are shaped by the belief that their individual life chances are linked to the fate of the race. This sense of linked fate is a product of the individual's interaction within both informal and formal African-American sociopolitical networks. These networks include the black media, the black family, and religious and community-based organizations” (11). This sense and the use of the heuristic mean that functionally, at the very least, there is little to differentiate the black utility heuristic from blackness as a hypergood.

The obvious objection to this is that the black utility heuristic is, as Dawson (1994) describes it, more a shortcut to determine interests in the face of the costs of information gathering rather than a true outgrowth of a black identity. And while the desires of the group as a whole do essentially act as hypergoods do, they do so only because of a sense of linked fate that

is not only waning, but likely undesirable. This is largely how Dawson presents it in *Behind the Mule*.

What the critique, and Dawson's original conception, do not acknowledge is that the fact of linked fate that drives the heuristic is not simply historically determined, but is actually the desired condition of a large portion of black Americans. This is because the belief in linked fate that drives the black utility heuristic is not simply historically determined, but is a normatively-preferred condition. As Cohen (1999, 10) interprets the concept of linked fate, "The progress of the group is understood as an *appropriate*, accurate, and accessible evaluative measure of one's individual success" [emphasis added]. And Gutmann (2003, 9) points to a "large body" of literature showing that group identity and the desire to support the group is "independent of the pursuit of self-interest." We can thus read the black utility heuristic is actually being much more than simply a heuristic. One could also respond as Appiah (2005, 263) might, and claim no heuristic is simply a shortcut. Instead, he writes, the actual purpose of the heuristic is "to help us make our imperfect states do what the perfect states would do." Functionally, this would mean that the heuristic itself acts as a second-order good, determining our first-order goods.

This response, showing that individuals want their blackness to guide their actions even apart from utility, allows us to move blackness beyond a simple second-order volition and into the realm of hypergoods. As Taylor (1989) writes, "hypergoods are understood by those who espouse them as a step to a higher moral consciousness," that identity should bring us beyond our base desires. And blackness does indeed take on much of this morality-defining quality (64). The commitment to blackness is seen to sometimes demand that individuals forsake utility in order to adhere to blackness's associated morality. And black individuals do indeed accede to these demands – at times, happily, and at others, only following the moral condemnation of the

group. In fact, Dawson (2001) describes “the consistent demand that *individual* African Americans take political stands that are perceived by the *community* as not harming the black community,” as the dominant nonliberal strand of the black political tradition. (31) This could be unsurprising, as Gutmann (2005, 9) claims that a defining characteristic of the group is the demands it makes on the actions, appearances, and even desires of its members.

Passing is perhaps the brightest example, rivaled only by support for conservative political policies, of a way to increase individual black utility often derided as harmful to the community as a whole. Criticisms of those who are able to and choose to continuously participate in society as non-black is not limited to the negative affect it might have on those who cannot themselves pass. Rejecting blackness is often seen as a moral failing, a refusal to live up to one's ethical commitment to one's race. Even in an empathetic decision to not name her family members who have passed for white, Adrian Piper (1992, 14-5) describes each as, “a person who desires personal social advantage and acceptance within the white community so much that she is willing to repudiate her family, her past, her history, and her personal connections with the African-American community in order to get them.” While the critique of passers was likely more vociferous historically than today, the response to Anatole Broyard's passing discussed in Chapter One indicates current condemnation. And as Gutmann (2003, 14) notes, those who can pass but choose not to, do so for their own moral reasons. Dismissing utility by publicly identifying with an oppressed or disadvantaged group clearly shows, she says, that self-interest cannot determine group identification.

Such cases exist throughout black history. Eric Foner (1994) points to black Democrats during Reconstruction who were actually “stripped of community-derived benefits, and publicly condemned and humiliated.” Voting in what they saw as their own best interests was considered

morally unacceptable. The same claim has been made by modern day black Republicans and libertarians such as Herman Cain and Thomas Sowell, who are attacked and excluded for supposedly undermining the race as a whole. As an important corollary, 91% of the black community contemporaneously supported the seating of Clarence Thomas to the Supreme Court, and prior to its strong opposition, “the NAACP hesitated to oppose his nominations because he was black, despite the fact that his judicial philosophy was inimical to that of the NAACP” (Gutmann 2004, 17). This was because, as Cohen details, “Thomas was successful in invoking a racial consensus of linked-fate framework in which attacks against him were reinterpreted as attacks against the entire black community” (13). The shaming of black feminists during black nationalist moments such as the mid-1960s and the Million Man March, and the silencing of internally marginalized groups, are some of the more anti-progressive examples of this tendency. In all of these cases, putting one's individual needs and desires ahead of those of the black community as a whole was seen as a moral failing. Even though the black utility heuristic did not hold or race was not objectively overdetermining in these cases, the larger black community placed a race-based moral import on individual choices.

The corollary to this condemnation is also true, as shown in the form of racial pride. Appiah (2005, 286) writes of black individuals whose identities are not only inseparable, but largely defined by their racial partiality. The success of in-group members is more important than that of out-group members, and perhaps even an individual member's own success. While Appiah attributes this pride largely to “race men and women,” this sort of partiality is extremely common. The 2004 National Ethnic Policy Survey (NEPS), for example, shows levels of racial closeness and pride at over 80% (Junn 2009). And as Dawson outlines in *Black Visions*, a large percentage of black Marxists, nationalists, feminists, and what he terms disillusioned liberals, all

support some level of group success at the cost of individual success. Only black conservatives, the least popular political identity, do not.

While there is some concern that Dawson's research might have occurred at a particularly nationalistic or communitarian moment in black history, continuous strong findings of linked fate and linked fate's seeming independence from class should alleviate much of this worry. Dawson found that the use of the heuristic extended beyond the more race-centric eras prior to the 1960s and into the present day, even while the relative import of class against race at the very least increased. More, class socioeconomic differences did not lead to differential perceptions of linked fate. (2001, 82) Belief in linked fate actually grew from the 1984 NBES to the 1996 NBES. And Jane Junn reports that the 2004 NEPS found very similar levels of feelings of linked fate to those Dawson found a decade earlier. (2009, 6)

More than just evidenced in survey responses, I argue that the willingness and desire to incorporate the needs of a racial community into previously non-racial or even anti-racial political ideologies is a defining aspect of black political thought and activism. Cedric Robinson's (1983) history of Black Marxism, for example, shows that proponents did more than incorporate theories of racism and racially-disparate economic conditions into theories presenting race as epiphenomenal. This is demonstrated in the writings and organizational structures of everyone from Du Bois to the Black Panthers to the African Blood Brotherhood. A similar incorporation of race is seen in liberalism, with elements of black economic nationalism incorporated even in the theories of Booker T. Washington. And Black feminists, particularly through the promotion of an intersectional worldview, take race as inseparable from feminist vision.

Few, if any, intellectuals, leaders or politicians have been able to win mass support

without modifying classical worldviews to incorporate the reality of racial distinctions. For example, the largest mass movement of black people in American history, led by Garvey, saw the maintenance of a black race as a moral good. Nineteenth and early 20<sup>th</sup> century leaders such as Du Bois and Washington expressed a desire for blackness to exist, at least for any foreseeable future. And even many of the major organizations of the Civil Rights Movement, from SNCC to CORE to even parts of the NAACP, were never fully integrationist, let alone assimilationist. While racially distinct organizing among liberal groups, and what Tommie Shelby (2005) calls practical black nationalists, were driven largely by conditions on the ground rather than a normative desire, “success” rarely, if ever, would have seen blackness become an irrelevant category. This likely stems, I suggest, partially from the large number of black individuals who intimately connect race and politics. In responding to a NEPS question on “the importance of being black to ideas about politics,” for example, 82% of respondents said that it was either very or somewhat important. The 49% who responded that it was very important dwarfed the 3% of whites who responded similarly to the correlative question, while doubling the Asian response and tripling the Latino response (Junn 2009).

### **The State's Role in Creating Blackness**

While in Chapter Two we saw how media reports help to name individuals, the US government has had and continues to have an enormous hand in determining the possibilities for naming that structure dynamic nominalism. The state has had and continues to have the dominant voice in creating the categories of race and blackness in which we can intersubjectively create individuals. In fact, Mills argues that a racial contract underlies American liberalism, and the maintenance of racial division and inequality is the primary concern of the state. Ron Mallon

(1998, 48) notes that this would mean that “the borders of American racial categories were determined in such a way as to 'establish and maintain the privileges of different groups.'”

Even short of that controversial claim, an outsized role should be unsurprising, as government's power, authority, and role in guiding lives has been well-documented. As Omi and Winant (1986) argue, US law and policy have largely developed and defined the racial categories still in use today. The American “racial dictatorship organized (albeit sometime in an incoherent and contradictory fashion) the 'color line' rendering it the fundamental division in U.S. Society. The dictatorship elaborated, articulated, and drove racial divisions not only through institutions, but also through psyches, extending up to our own time the racial obsessions of the conquest and slavery periods” (66). This section begins with an overview of this process, demonstrating the US Government's role in the creation of blackness as both a category and identity, with a focus on labeling and naming. Next, I argue that government’s dominant role in the dialogue making of blackness an important, identity-defining category speaks to its responsibility to actively maintain blackness as an extant option.

(It should be noted quickly that government's special responsibility is not simply due to the creation of blackness as an identity. Crucially, though obviously, government has also played the major role in making blackness matter for the self-respect and life chances of black people as individuals and a group. Numerous authors have convincingly demonstrated that blackness has been and continues to be at least partially-determining of life chances. It should suffice to mention a few examples, such as the empirical works of Manning Marable, William Julius Wilson, and Douglas Massey and Nancy Denton, and the theoretical work of Mills, Cheryl Harris, and Lani Guinier.)

The argument that government has the power to make an identity should not be



controversial. Political science research has shown definitively that it is possible for public policy to directly create associative groups, interests, and even large group identities. In *How Policies Make Citizens*, for example, Andrea Campbell (2003) uses social security and the creation of the welfare state to show that government policies, the benefits they offered, and the way they define recipients largely created the identity *senior citizen*. “Public policy can confer resources, motivate interest in government affairs by tying well-being to government action, define groups for mobilization, and even shape the content and meaning of democratic citizenship” (1). While Campbell's focus is on how policy affects the use of citizenship rights, she also demonstrates how these policies create an identity by which millions define themselves, even outside of their interactions with the government. In *Who Governs?*, Robert Dahl (1961) famously details how government helped to dissolve ethnic identities through incorporation, while simultaneously expanding and strengthening the identity of whiteness. And John Skrentny (2002) discusses the creation of Mexican-American as a full ethno-racial identity by Harry Truman's Presidential Committee of Civil Rights. The final report, *To Secure These Rights*, “gave official sanction to the notion that Mexican Americans were a distinct race.” That this occurred over the strong objections of the Mexican American community, which largely saw itself as indistinguishable from white Americans, only strengthens the case for government's power. (91, 93)

The history of the US Government's role in the creation of blackness is much more complex than these examples, but leads to a similar place. “Just as the conquest created the 'native' where once there had been Pequot, Iroquois, or Tutelo,” Omi and Winant write, “so too it created the 'black' where once there had been Asante or Ovimbundu, Yoruba or Bakongo” (66). They go on:

Through *policies* which are explicitly or implicitly racial, state institutions organize and

enforce the racial politics of everyday life. For example, they enforce racial (non)discrimination policies, which they administer, arbitrate, and encode in law. They organize racial identities by means of education, family law, and the procedures for punishment, treatment, and surveillance of the criminal, deviant, and ill (83).

And these racial projects extend all the way back to the beginning of the republic.

In *American Slavery, American Freedom*, Edmund Morgan (1975) makes the case that race, as we understand it, did not even exist at the inception of United States, but was rather an invention meant to further state and monied interests. In *Making Race and Nation*, a comparative history of the United States, South Africa and Brazil, Anthony Marx (1998) essentially extends Morgan's thesis. He argues that the primary circumstance that “makes” race is the need to form or strengthen the nation-state, largely by uniting disparate groups and ethnicities into “whites.” Marx is at his most convincing during his discussion of the post-Reconstruction United States, showing the drive to consolidate central power, in addition to political party competition, drove the creation of racial categories and identities. And both Nikhil Singh (2004) and Mills (1997) argue in different ways that American democracy rests on the creation and existence of black people as a group.

The law, through both legislative and judicial acts, has contributed to the creation and maintenance of racial categories. Ian Haney-Lopez (1996) details how, “In its first words on the subject of citizenship, Congress in 1790 restricted naturalization to 'white men,’” In federal courts' consideration of who there “white men” were, “the courts were required...to articulate rationales for the divisions *they were creating*” [emphasis added]. And from the end of Reconstruction through the Civil Rights Act of 1964, Jim Crow laws often required the physical separation of those made black from those considered white. Anti-miscegenation laws, prohibiting marriage and sexual relationships between white and black people, quite literally maintained boundaries between racial groups.

This direct legal defining of blackness is not simply historical. In fact, Omi and Winant argue that “the state *is* inherently racial. Far from *intervening* in racial conflicts, the state is itself increasingly the preeminent site of racial conflict.” (82) A stark recent example is the Susie Guillory Phipps' 1983 challenge of a Louisiana law which defined any individual with at least 1/32<sup>nd</sup> “Negro blood” as black. Phipps' had attempted to change her legal racial classification from black to white and was rejected. Her case relied on a challenge to the constitutionality of collecting racial data as well as genealogical research indicating that a majority of “whites” in Louisiana would be black under this definition. The state prevailed, and retained the right to collect racial demographic data as well as solidify what was essentially hypodescent as the law of the land.

It hasn't been only been racist laws, but also the implementation of nominally race-neutral and universal policies that have created, or at least reinforced, racial groups. Theda Skocpol's (1992) *Protecting Soldiers and Mothers* details how the ostensibly race-neutral creation of American welfare policies solidified racial group boundaries. Similarly, Ira Katznelson (2005) has argued convincingly that explicitly race-neutral “affirmative action” policies initially benefited whites, in turn pushing whites to protect benefits an economic status through the maintenance of group separation. And while the the GI Bill was designed to be “America’s first color-blind social legislation,” (118) black people's inability to take nearly the same advantage of the Selective Service and the program's parochial implementation meant that, “There was no greater instrument for widening an already huge racial gap in postwar America than the GI Bill.” (121)

Not only can the race-creating and maintaining policies be descriptively neutral rather than negative, they might also be an attempt at positive recognition. As we'll see below, the

Equal Employment Opportunity Commission's decision to identify minorities based on phenotype for purposes of antidiscrimination meant that, “an immigrant from Jamaica or Kenya would be grouped with an American descendent of slaves” (Skrentny 2002, 109). And Omi and Winant cite the example of racial gerrymandering ordered in the wake of the 1965 Voting Rights Act and continuing today. While designed to increase electoral equality, the authors see this as a form of “tokenism” reifying racial categories, as “they often operate through 'racial lumping,' tend to freeze rather than overcome racial inequalities, and frequently subvert or defuse political processes through which racially defined groups could otherwise negotiate their differences and interests.” (74)

Crucially, these laws did not simply create a group termed black, but created the institutions and separate spaces which in turn created a distinct identity and ideology. De jure segregation following Reconstruction and de facto segregation after that directly led to the formation of “indigenous institutions such as black fraternal and political organizations and more black churches.” (Dawson 59-60) It is in these institutions where oppositional identities were created, and the content of blackness was filled in. According to Cohen (1999), “Closely associated with the provision of indigenous resources for mobilization is the role that indigenous organizations, elites, and networks of communication play in structuring the political outlook and group consciousness of the community. Marginal group members...turn instinctively to indigenous sources of information – community leaders, newspapers, organizations, social networks – for new ways to understand and process their experiences.” (52) While Dawson (2001) might worry about the continued existence of these counterpublic spheres, Harris-Lacewell shows that many still thrive in places such as barbershops, churches, and black-owned and -oriented television.

The oppositional identities created here have made their own demands on government for racial recognition. While my focus has been on government policy making blackness, it should be clear that the connection between government and minority identity is not unidirectional. Black history is also full of activists and movement leaders demanding that the state recognize black people as a separate collective, worthy of group rights. From the Black Belt Thesis to community control to various claims to be a nation-within-a-nation, black movements have sought government's recognition of their own distinctive and separate societies and economies. For Omi and Winant, these demands for state response have become paradigmatic of all racial group demands, as, "Racially based movements have as their most fundamental task the creation of new identities, new racial meanings, and a new collective subjectivity." (90) Citing the creation of Asian American as a political label out of various groups such as Chinese American and Korean American, they claim that, "Today racial movements not only pose new demands originating outside state institutions, but may also frame their 'common identity' in response to state-based racial initiatives." (89) So while my focus is on state actions, the role of the groups themselves in this process should not be ignored.

### **The Census and Government Forms as Crucial Sites**

Government collection of racial data through official forms, especially the decennial census, has been one of the most important state sites of race creation. Here, I will discuss three major, relevant aspects. The first is a continuation of the government's role, discussed above, in creating distinct and specific racial categories. The second involves the lead role government plays in placing individuals into the group categories it helped to create. As we will see, much of this involves a group-level form of the intersubjective dynamic nominalism discussed and

defended in Chapters One and Two. And third, government censuses and similar forms play an important role in understanding the existence of blackness as hypergood, as contact with the government is one of the few times that black people are so starkly and directly confronted with the existential question, who are you?

Benedict Anderson (1991) argues in *Imagined Communities* that the aim of the census is to make people legible to the state. Largely for the purposes of control and taxation, states set up the census in order to measure, define, and understand its citizens. Junn, for example, talks of how the original choice to include racial categories in the federal census was to facilitate representation and taxation through the 3/5 Compromise. To use James Scott's (1990) term, the census makes people legible.

But more than just collect information on its people, states repeatedly use the census to create its citizens, and the groups in which those citizens will be divided. This interaction between peoples and the census can be seen in Alain Desrosières' *The Politics of Large Numbers*, as well as Hacking's "Biopower and the Avalanche Printed Numbers". The latter argues that, "The census has always been part of imperial administration – it is why Jesus was born in Bethlehem. In the modern period, the first censuses were in the colonies – Quebec, Peru, Virginia. When the census and related tabulations start doing [*sic*] new kinds of people or their characteristics, they may inaugurate a new kind of person that had not been self-conscious before." (Hacking 2006)

This interaction is especially evident in regards to racial kinds. According to Melissa Nobles, for example, "The American and Brazilian experiences richly reveal the sinuous relationship between racial ideas, census-taking, and public policy. They teach us that racial categories on censuses do not merely capture demographic realities, but rather reflect and help to

create political realities and ways of seeing.” (2002, 66) And Skrentny, as we'll see momentarily, has done great work showing the enormous import of government data collection – and the forms through which the data is collected – have in creating identities.

Much of this race- and category-making is about facilitating the work of the state and benefiting those with a controlling interest. The initial acts described by Morgan, for example, were meant to solidify control over Virginia colony for the white aristocracy. But while most of the academic focus is on making peoples legible to the state, it also creates the categories which make people legible to themselves. According to David Kertzer and Dominique Arel (2002), census categorization, and linking benefits to those categories, creates incentives for group identity. “Far from merely reflecting what is 'out there,’” they argue, “the census can be transformed into a mechanism of identity formation.”(25)

In their comparative study of national census and their impact, the pair find, “the use of identity categories in censuses – as in other mechanisms of state administration – creates a particular vision of social reality. All people are assigned to a single category, and hence are conceptualized as sharing, within a certain number of others, a common collective identity. This, in turn, encourages people to view the world as composed of distinct groups of people and may focus attention on whatever criteria are utilized to distinguish among these categories.” (5-6) They point to Jacqueline Urla's study of the Basque in Spain where minority languages groups utilized collected social data to “create their own construction of social reality” as a clear example. (20) And within the US, Passel found that “the number of Americans of Slovak, Croat, and French Canadian ancestry more than doubled between the 1980 and 1990 censuses, while the number of Cajuns increased sixty-fold – all four categories which were not listed in 1980, but were in 1990.” We also see this in the multiracial movement in the United States, in which the

stated goal of many of the proponents is not just to accurately portray individuals' race, but to expand and validate the exist of a multiracial identity.

Generally the power for this identity creation is attributed, as those examples imply, to the either the existence of greater options or the coupling of group status and material benefits. But each of these occurs in some important way on the group level. There are, however, a pair of strictly individual-level processes here that are important for identity formation.

First, government forms, and the census in particular, is one of the few times that individuals are so bluntly asked the existential question, Who are you? While the answer to the race question will have no impact on individual respondents, it is the most powerful institution asking how it is they identify themselves. And unlike the other questions on the census, the race and ethnicity questions have no “correct” answers.

And second, the federal Census looks functionally like dynamic nominalism, with the discussion occurring directly between the individual and the government rather than the individual and other members of society. As David Theo Goldberg (2002) argues, the census is really “an exercise in social naming, in nominating into existence.” Pierre Bourdieu (1984) similarly discusses this power to create society through the use of words. This naming and creating through the limiting of choices and the intersubjective answering of those questions is essentially the group-level version of the individual level dynamic nominalism outlined in the first chapter.

The instructions provided to early census takers explicitly demanded something nearly identical to this dynamic nominalism. Though the one-drop rule was the law of the land, race was not primarily determined through genealogy, or any discussion of origin, biology, or culture. Instead, blackness was determined and defined primarily by phenotype. Then, in the difficult



cases – assumed to be certain individuals who were not completely black – a short dialogue would occur, in which individuals would assert their race through answers concerning family. The enumerator would then have final say on what racial category the individual would be placed in. In the 1890 Census, for example, Nobles (2002, 53) finds, “Enumerators were expected to determine, primarily through visual inspection and then through questioning of an individual (when possible and/or necessary), whether that individual was a mulatto, quadroon, octoroon, or one of the other racial categories.” This intersubjective naming followed by an “official” racial definition that affects lives – here through government policy – is exactly what dynamic nominalism looks like.

The census is particularly relevant because many groups now see it as the proper site to demand recognition as a racial or ethnic category, and encourage public discussion and support of group existence and import (Nobles 2002, 44). Its federal weight and intense media coverage of changes have attracted enormous minority group intervention. And the dialogue between these groups and the government here is perhaps the most important example of the intersubjective determination of the categories that will be available for dynamic nominalism. A public and private back-and-forth about what counts as a minority, as a race or ethnicity, has taken place for several decades, and the intersubjective naming of groups again mirrors the individual level dynamic nominalism described in Chapter One.

In 1977, the Office of Management and Budget (OMB) opened up a public forum about revisions to the racial categories on the census. The debate attracted enormous pressure from minority groups, especially from Latinos arguing for inclusion. This pressure was largely responsible for the compromise measure set through the OMB's Directive No. 15, which created a separate question about Latino ethnicity. This partial victory continues to hold, with Hispanic

still an official ethnic rather than racial category. Later, during the OMB's 1993 comprehensive review of census categories, numerous other minority groups lobbied the federal government to be recognized as distinct racial groups through inclusion as separate categories. Among the changes sought were the addition of multiracial and Arab options, as well as Celtic and German disambiguation of the white category, Arab or Middle-Eastern (Nobles 2002, 59). Here, the government's outsized power in the dialogue meant that the desires of all of these groups were rejected, though an option to "Mark One or More" was won in compromise.

The census, though, is not the only, or even perhaps most important, racial collection form. That distinction might go to the EEO-1, the creation of which Skrentny (2002) has detailed excellently. The EEO-1 not only helped to create American minority identities, but the instructions and creation also echo the visual determination of early federal censuses, while demonstrating government's *explicit* support for the individual level dynamic nominalism.

Following the creation of the Equal Employment Opportunities Commission via Title VII of the Civil Rights Act of 1964, the EEOC sought an efficient, proactive way to discover and root out discrimination. To ease data collection, proactively find discrimination, and focus on companies with almost no black workers, the EEOC developed the EEO-1 form to send to employers (89). The number and percentage of black and other minority hires could then be compared to similar companies and the available workforce.

The EEOC appears to have had no formal or informal discussions about which minority groups would be included along with black people on the form. Instead, groups seem to have been included due to an unexamined assumption that they were largely analogous to black people (Skrentny 2002, 108). Latinos, American Indians, some Asian Americans, and all women regardless were considered sufficiently similar to black Americans, while religious groups and

white ethnics were not. There was no mass mobilization among those groups included or not to be added to the form (90). Even major major civil rights organizations and institutional leaders such as the NAACP and LULAC were completely silent (107). Only a representative of Polish Americans seems to have requested – and being rejected for – a place on the EEO-1 (108).

The assumptions, however, had an enormous impact on how minority groups were viewed both externally and internally. The federal government had officially and powerfully stated which groups were minorities and which were not. As the analogy to blacks meant that each of these groups was essentially treated as a race, the internal divisions were largely blurred. (101) Differences in national origin, citizenship, socioeconomic status, etc. were ignored in favor of a totalizing view of each group, both from within and without.

The EEO-1's assumptions also greatly affected how the federal government would from then on treat issues of discrimination. By analogizing these groups to black Americans, the form gave official support to the idea that civil rights legislation, especially Title VII of the Civil Rights Act of 1965, was primarily about racial discrimination. In doing so, it privileged certain type of discrimination and underrepresentation, while essentially hiding other forms. And it was on the basis of the form's categories and the statistics gleaned from counting within those categories, that the country's antidiscrimination and affirmative action measures were created.

How employers would fill out the EEO-1 was in some dispute. Rather than ask employees to self-identify, employers were instructed to visually assess the employee's race, a direct echo of the early federal censuses. The NAACP had been understandably wary of past attempts by employers to ask applicants their race, and pressured the EEOC to not encourage the practice now. Perhaps more importantly, the administrators simply felt that that antidiscrimination should mirror discrimination. According to the EEOC's Herbert Hammerman,

“It also seemed obvious to me that it made sense for employers to identify minorities in the same way that they were discriminated against, by observation. After all, employers were not sociologists.” (108) As Skrentny writes, using visual cues rather than self-identification meant that, according to the federal government, “Anyone who looked black was black.” (108) But while Skrentny reads this as an affirmation of the one-drop rule, the explicit instruction to use phenotype rather than genealogy actually indicates that the government and NAACP preferred a definition of race that looked much more like the dynamic nominalism of blackness. Origins, culture and politics were ignored in favor of an identity by ascription affected only by unexamined actions of applicants and employees.

If questions on government forms are so crucial to both identity formation and the process of dynamic nominalism, it becomes important to look at real evidence about what shifts in the questions might do. Taeku Lee (2004), for instance, has experimented with an alternative to the current census, not just with regards to categories but to the process as well. Lee's alternative incorporates Lani Guinier's (1994) concept of distributive voting, and allows for a more detailed and perhaps accurate description of how people see themselves. First, the version Lee (2009) designed for the California Golden Bear Omnibus Survey listed Hispanic as a racial rather than ethnic category. Second, and more radically, the US Census's “Mark one or more” was replaced by a system which allowed weighted self-identification across multiple categories. The question read:

In identifying a person's race and ethnicity, we often use just one racial or ethnic category. Sometimes, however, more than one racial or ethnic category is applicable. Suppose you could describe a person's race and ethnicity using 10 points to allocate as you wish to any group that you think accurately describes a person. For example, if you thought someone were half-white and half-Asian, you might allocate 5 points each. Or if you thought someone were mostly black but had some Hispanic heritage, you might allocate 9 points for black and 1 point for Hispanic. Now suppose you are asked to describe your own racial background in this way. How would you describe your race and ethnicity using this 10 points system? (Lee, 2009)

The 2004 National Ethnic Politics Pre-Election Study provided an initial experimental test of Lee's alternative question. Junn found that only 39% of black respondents allocated all ten points to their race. This was easily the lowest percentage among the traditional racial categories, as 75% of whites and 60% of Asian-Americans identified as completely monoracial. This could certainly suggest that an official change to this or a similar question would do more to carve up black identity more than any other. And of the 416 black respondents, 30% assigned some point value to white, 13% to Latino and 10% to Asian-American, while 7% completely refused to enumerate (7-8).

Timothy Johnson, et al. (1997) have convincingly demonstrated that much less radical, even minor, shifts in survey questions and options can impact racial identification. In a controlled experiment, the authors offered a preselected group of 69 multiracial and multiethnic women several forms with competing options for self-identification. They found enormous shifts in how respondents classified themselves when form options were added or removed options. Major differences occurred with the addition of an open-ended birth certificate option, several versions of self-identification, a multiracial option, and, especially, an option of “not classified.” The authors even noticed large shifts in classification when the option “Other (Specify)” was replaced by “Other (Not Specified)”. Apart from the experiment, Johnson et al. found that 49.3% of their multiracial respondents affirmed having, at different times, reported their race of ethnicity differently. Along with changes in self-identification, perceived advantages in acquiring government resources, and social context, some said that shift was “in response to the range of options available on precoded application forms.” While perhaps this is unexpected in a sampling of self-professed multiracial and multiethnic women, a 2001 Washington Post/Henry J. Kaiser Family Foundation/Harvard University poll found that the results would not be very

different with a sampling of all black Americans. It found that only 48% of respondents always self-identified as a single race, while 28% identified as multiracial, and 9% said they racially self-identified differently in different social contexts.

Demonstrating, as Lee, Johnson et al, and others have, that people will self-identify differently depending on the options provided is not a trivial issue of situational identities. The aforementioned *How Policies Make Citizens*, for instance, provides the general case of shifts in bureaucratic policy altering and even undermining the identities and groups it helped create. There, Campbell shows that if the federal government were to privatize social security and decouple the benefits of the individual from that of the group, “cleavages could open in this population that until now has successfully maintained cohesion around its welfare state programs” (12). And as we saw above, changes in identification by self and others can actually shift the underlying identity. The elimination of identity options and their attendant benefits can help to destroy identities in the same way they were originally created.

### **Normative Responsibilities of the State**

A somewhat similar observation about the power of forms to affect self-identification actually drives Appiah's defense of government intervention. As I do, Appiah believes that racial data collection impacts how black individuals think of blackness. His conclusion, however, is very different from my own.

As social identities help to constitute individual identities, he argues, an incoherent social identity can lead to an incoherent individual identity. This individual incoherence leads to worse and less-fulfilling lives, and thus requires remedy. The social identity must be refashioned into something coherent in order to improve the lives of the individuals who are defined by them.

Often, however, mere facts about the incoherence of social identities are unconvincing to irrational individuals, or insufficiently powerful to change the norms associated with embedded social identities. It is then that Appiah (2005, 282) believes the government should step in and put its weight behind eliminating or at least elucidating the incoherence.

Appiah argues that blackness, like most modern racial and ethnic categories, is an example of an incoherent identity. He rues the fact that the academic acceptance of the social construction of race has not been repeated by the masses, who instead stick with something resembling hypodescent. As this sort of essentialism is incoherent, it creates incoherent individuals. Removing the incoherence, he argues, would allow for healthier individuals, lead people to treat each other better, and increase the possibilities for ethical lives. And since no amount of academic argument or public discussion or education seems to have lessened the incoherence, government should more forcefully step in (282-3).

It should be noted that what Appiah sees as incoherence – a refusal to either espouse a social constructivist view of race or to accept that most white people are in fact black – might not be incoherence at all. Lionel McPherson and Tommie Shelby (2004) make this claim, arguing there is a much smaller commitment to the one-drop rule than Appiah claims, and the extent of the commitment might be a very reasonable response to American racial realities. They argue that the one-drop rule, while unsurprisingly partially accepted by even blacks in a racist society, is used largely only for difficult cases. And employing two thought experiments, they demonstrate that most black Americans would actually reject the one-drop rule in favor of black political solidarity. They write, “[Black people] may have false views about the cogency of the biological notion, but they nonetheless have a sufficiently clear idea of who counts as black for social and political purposes” (187). Rather than maintaining an incoherent or “irrational” view

of race here, it is very likely that black people are making a perfectly coherent and rational *political* response to the information.

But if we grant that Appiah is correct and this is incoherence in need of intervention, the question becomes whether soul-making through government reform is actually possible here. And Appiah believes it is. He turns, as I have, to government collection of racial data. While ignoring specifics, he quickly mentions censuses and police intake as important sites at which the use of clearly-defined racial categories on these forms encourages individuals to see racial categories as both distinct and obvious, rather than complicated and illogical. As a “major strut” in reifying the incoherent racial worldview, racial data collection becomes an important area for reform. (Appiah 2005, 289)

He could, here, take an elimintivist position similar to that of Naomi Zack (1995). Removing, rather than reforming, racial data collection would likely do more to eliminate the incoherence. And it is certainly more coherent than the current “Mark on or more,” or even multiracial categories, both of which imply some combination of distinct races. Appiah, however, cannot go so far, as he defends the collection of at least some racial data for antidiscrimination purposes (and seemingly nothing more). He explicitly removes himself from the game of policy suggestion, but the implication appears to be a suggestion for much more minimal collection of racial data at most sites, and some reorganization of the categories which drives the data collection. Perhaps this would mean a move to intake forms with questions similar to Lee's suggestion, as responses might be considered more accurate, or at least properly muddled. Black people, he believes, would be more likely to understand the “truth” of race under such a system, removing some ethical incoherence and making their lives better.

Still, whatever option Appiah finds would remove the coherence would also weaken the



category of blackness. This is by design, as the argument is for the removal of government support for the current notion of black identity held by black people. And it could certainly be successful. As the census's ancestry questions and the NEPS indicate, many fewer people will identify as black with this sort of change. At the very least, it would reduce the government's ability to couple benefits (including antidiscrimination and affirmative action) to blackness, weakening linked fate and making the group's existence less important in people's lives. In total, it would affect the existence of blackness as a hypergood, just the opposite of what the evidence above indicates is best.

But while I disagree with why and how Appiah believes government should undertake a soul-making project, I do believe such a project should exist. Instead of weakening the category of blackness, governmental considerations of racial data collection should actually reinforce the option to choose blackness. This is because of the grave political and psychological harm that would come were blackness removed as a possible hypergood. The latter stem from both the great psychological importance of identity generally, as well as the psychological harm attributed to misrecognition and nonrecognition above. More, the removal would lead to both political harm to blacks as individuals and black people as a group, as well as impoverish American society as a whole.

In terms of politics, as Claudia Card (1999) argues, being color conscious in our racialized country is almost always going to be necessary in order to combat oppression, by recognizing friends, the form of oppression, avoiding enemies, and so forth. Similarly, Young (1990, 167) argues, "Separate organization is probably necessary in order for these groups to discover and reinforce the positivity of their specific experience, to collapse, and eliminate double consciousness." These claims are not so far from those made by most major black

institutions against attempts by the “multiracial movement,” including groups such as Project RACE (Reclassify All Children Equally), to include “Multiracial” as its own census category. Larger black organizations argued that the extant categories were necessary to effectively – if perhaps not as accurately – count the number of black Americans in order to recognize discrimination and create, at least, the equality of opportunity demanded by people across the political spectrum. Even with the compromise of “Mark one or more,” however, the *New York Times* stated in 2001, “The surprisingly large multiracial response on the 2000 census could have major implications for monitoring and enforcing civil rights, tracking poverty, ensuring racial balance in public schools and providing aid to minorities, sociologists and federal officials said today”(Schmitt 2001).

Aside from pure politics, psychological well-being, especially healthy self-respect, is crucially important to the pursuit of the good. According to Gutmann (1994, 42), self-respect brings with it security and pride in one's life plan, and without it, “activities and choices in life may have little or no point. Self-respect, so conceived, is a necessary condition for the meaningfulness of a person's life activities.” Without recognition for an individual's identity, Taylor (1994) and others argue, our choices, our successes, and our freedom would mean less. It is only with the self-respect created through recognition that we feel our lives matter.

Prior research supports my contention that blackness is often a crucial aspect of one's sense of self and psychological health. This is unsurprising, because, as Appiah writes, “A person who cares about something is, as it were, invested in it. He *identifies* himself with what he cares about in the sense that he makes himself vulnerable to losses and susceptible to benefits depending upon whether what he cares about is diminished or enhanced.” Results from the previously-discussed MMRI, for example, demonstrate some of the negative results we could

expect from removing blackness as an available hypergood.

Using experimental set-ups and the MMRI scale, Seaton, Scottham, and Sellers (2006, 1416) have shown that black adolescents between 11 and 17 with the strongest racial identity also demonstrated the “highest levels of psychological well-being.” And, crucially, those black adolescents with the lowest level of racial identification displayed the least psychological health. In similar tests of black high school and college students, Rowley, et al. (1998, 721) used survey and experimental results to show that “private racial regard” had a significant, positive relationship to self esteem. These results match the small amount of previous literature connecting black identity and self-worth. For instance, Crocker, Luhtanen, Blaine, and Broadnax (via Rowley 1998, 716) found that, “African American students who felt more positive about African Americans and felt more positive about being African American had higher self-esteem scores.”

Research also shows that the connection between identity and psychological well-being is especially strong for children and teenagers. For example, Yip, Sellers and Seaton (2006) found that the later black children developed their black identity, the more depressed they would become and the worse they would perform in college. The famous Kenneth Clark doll experiment, an important footnote to *Brown v. Board*, might also be read as evidence of the psychological need for a full and recognized identity. By misrecognizing black identity through separate and inferior education, government helped to foster a sense of self-hatred and outgroup preference among of black children. That these latter examples directly relate to children should cause us greater concern and leave us open to intervention. Even where Appiah is wary of soul-making projects, he contends that ensuring children develop identities is one of three grounds for doing so (299). “Children children need to be prepared for a life with an identity...[and]

because people are entitled to the resources for self-construction, because their lives matter and identity matters to their lives, the state must secure these resources for them, if nobody else will” (294).

In addition to what the loss of an available black identity would do to black people, there would be an attendant loss to America society as a whole. This is because maintaining a non-hegemonic identity, in addition to the necessary role it plays for those with those identities, can benefit entire societies in very concrete ways.

First, there is the benefit more commonly discussed in African American Studies of providing a sort of second sight into the state and society. Rather than the multiple identities working against each other, they very well might complement each other with the same positive aspects of what Du Bois termed “double consciousness.” As Du Bois (1903) explained, the experience of being simultaneously American and black provides African Americans with both an insider and outsider perspective on American life, and a special gift of insight that will only improve both communities. And as Young argues, “the ideal of a universal humanity without social group differences allows privileged groups to ignore their own group specificity” (165). Similarly, this alternative identity might provide the sort of justice-illuminating outsider position first described by Adam Smith and later expanded, notably by Amartya Sen. This alternative perspective is especially important if blackness is akin to Susan Okin’s conception of gender as an identity with which others cannot properly empathize.

Second, Gutmann claims that justice-friendly ascriptive groups are at their best when doing work that otherwise would not – and, I would add, could not – be done in their stead. “Justice-friendly ascriptive associations at their best do important work that otherwise not be done in their stead,” she writes, using the black institutions as her primary example. The

NAACP, for instance, did the justice-friendly work of publicizing the suppression of electoral participation that disproportionately affected poor and black Americans – work that would not have been done otherwise.

Non-recognition's harm must be especially great for racial groups, as the acceptance of social constructivism and the rejection of biologically or culturally determined race leaves only recognition as a source of self. Granting that, and government's role in making it so, puts the onus on government to continue to make blackness an available identity. How that is to be done is a difficult question.

As mentioned earlier, the politics of recognition has largely turned into a politics of multiculturalism. And those who have looked at its application to race, including Brian Barry (2001) and Gutmann, have explicitly or implicitly treated black people as a cultural group. Thus, hypotheticals and suggestions regarding recognition have focused on the supposed cultural traits of American blacks. I believe that it is largely for this reason that nearly all have found a politics of recognition aimed at black people as largely untenable. Defenses have been criticized on grounds of everything from cultural heterogeneity and unwarranted recognition-seeking (Appiah) to oppressive notions of blackness and masculinity (Hanchard 1994). By equating blackness with black culture, these discussions of recognition will always be criticized, even by many black people, as privileging a hegemonic perspective within the group.

But as my conception of blackness does not imply any particular language, cultural traits, or ways of being, it is free from most of these concerns. As dynamic nominalism mainly describes the process by which “racial blackness” is determined and comes to matter, it is relatively agnostic as to the existence and import of political blackness, cultural blackness, and religious blackness. For instance, the strength of the dynamic aspect – the social consequences of

being named black – might easily be strong enough to allow for (or even require) pragmatic nationalist strategies and beliefs. At the same time, this conception is compatible with the most cosmopolitan, anti-nationalist conceptions, as one’s blackness is not in-born and is often not chosen. In fact, this racial blackness might be seen as a prerequisite for other modes of blackness rather than as precluding them.

The downside of not privileging specific traits, however, is the need for novel ways to maintain blackness. While not equating blackness purely with cultural blackness lessens certain concerns, any new suggestion should take care to 1) not reify the negative aspects of race, 2) prevent secondary marginalization (Cohen) and promote deep pluralism (Philip Thompson 2006), 3) address Adolph Reed and Sally Haslanger’s (2000) concerns about the creation of a “black community,” 4) permit black self-determination (at least in terms of self-definition), and 5) create space for self-expression as an important aspect of non-distributional justice (Young). It must also consider Gayatri Spivak’s (1996) critique of the “we,” in which the expansion of the categories “American” and “human” at the expense of “black” actually constitutes an imperialist gesture whereby cultural differences are subordinated precisely through the strategy of an ever-expansive “inclusion.”

Like Appiah, I do not believe that this is the space in which policies for recognition should be written. Still, Chapter Four will provide a discussion of possibilities while addressing what an acceptance of a theory akin to dynamic nominalism argued in the first two chapters – and the role of government in the process described in this chapter – would mean for antidiscrimination policy. The chapter will look at current EEOC practices in fighting discrimination to demonstrate how adopting forms and procedures that take dynamic nominalism seriously would alter the agency's work and better recognize blackness.

## CHAPTER FOUR:

### DEFINITIONS OF RACE AND ANTIDISCRIMINATION POLICY

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#### Introduction

Although the federal government maintains an active and crucial role in making blackness, it has recently been largely unable or unwilling to explicitly provide a coherent definition of blackness, or even race more generally. While this is perhaps understandable given the socially constructed nature of race and the United States Government's historical support for white supremacy, the lack of an accurate definition of blackness hampers contemporary efforts to combat public and private racism. The purpose of this chapter is to explore the inconsistencies and contradictions within the state's currently used definitions of race and blackness, to demonstrate how federal philosophies and practices curtail a proper understanding of race, and to demonstrate how the use of a more accurate definition would affect antidiscrimination policy. The alternate definition I will explore is the dynamic nominalism of blackness for which I argued in Chapters One and Two, though other similar conceptions of race and blackness would likely lead to similar results.

I have chosen to examine how the use of a dynamic nominalist conception of blackness would affect government practice through the Equal Enforcement Opportunities Commission (EEOC) due to the agency's key role in fighting anti-black discrimination. Created by Congress through Title VII of the 1964 Civil Rights Act (CRA), the EEOC opened its doors in 1965 as the federal agency responsible for enforcing antidiscrimination laws in both private and public employment. Run by the president's political appointees, the agency “operates as a 'claims

adjustment bureau' rather than a law enforcement agency,” (Wakefield and Uggen 2004) processing individuals' charges of Title VII violations. Currently covering all employers with at least 15 employees, and requiring reports on gender and racial workforce composition for over 40% of the private sector, the EEOC is the dominant locus for antidiscrimination efforts. By 2010, the agency was annually receiving nearly 100,000 individual charge filings, a plurality of which were claims of race discrimination.

In this chapter, I will examine EEOC documents, antidiscrimination charges, and secondary literature to provide the first full account of both the agency's professed and actually-employed definitions of race and blackness. I will demonstrate the incoherent and contradictory definitions of race that the agency supplies employers, complainants, and other federal agencies, and look at how philosophies of post-racialism, colorblindness, and statistical discrimination have pushed the agency farther away from an appropriate definition. Then, through an examination of the EEOC's handling of race discrimination charges, I will show that utilizing the dynamic nominalism of blackness would significantly affect the number and outcome of employment discrimination claims.

### **The EEOC and Claims of Discrimination**

According to Title VII of the 1964 Civil Rights Act, the EEOC was created to keep “free from any discrimination based on race, color, religion, sex, or national origin” all employees and applicants for employment of large employers and the federal government, including the military, executive agencies, the judiciary, and the legislature. To execute its duties, the EEOC was empowered to receive complaints of discrimination and to employ “appropriate remedies,” including forced rehiring, and to institute “such rules, regulations, orders and instructions as it



deems necessary.” Specifically, the EEOC was given the power to 1) maintain and annually review affirmative programs and plans for equal employment opportunity across national and regional government departments and agencies, 2) evaluate and report on each government agency's progress, and 3) work with interested public organizations and individuals to improve performance. Appropriate plans could include, among other things, educational and training programs.

Congress explicitly created the EEOC to take up the function of various Fair Employment Agencies (FEAs), particularly the Fair Employment Commission (FEC), established in 1941 under President Franklin Roosevelt to “receive and investigate claims of discrimination” (Munroe 1995). Title VII directed the agency to execute all equal employment laws, and indicated that “workers who suspect they have been subject to discrimination can seek legal redress by filing a formal complaint of discrimination with the EEOC” (Hirsh and Kornich 2008). The EEOC would work largely as these FEAs had, as a “claims adjustment bureau' rather than a law enforcement agency,” (Wakefield and Uggen 2004) receiving complaints and resolving disputes between employees and employers. The organization would thus be primarily complaint-driven, receiving charges of discrimination, and investigating and attempting resolutions only when discrimination was found. Congress had intentionally endowed EEOC with such limited powers in order to attain passage, and anything further required a referral to the attorney general (Skrentny 2002, 88).

While Title VII explicitly listed five categories of discrimination, the focus was clearly on race, and on blackness, in particular. Title VII's antidiscrimination provisions were rooted in the Unemployment Relief Act of 1933, which had focused on “race,color, or creed” (EEOC, Celebrating the 40th Anniversary of Title VII). The 1964 act was similarly-designed to combat

discrimination and improve the employment prospects of black male workers (Blankenship 1993 via Wakefield and Uggen 2004). Some even argue that sex discrimination was added to Title VII only as a poison pill meant to stop the CRA's passage. Congressional testimony and agency actions show that “complaints on the basis of race were clearly the most legitimized form of discrimination grievance,” and the large majority of initial complaints unsurprisingly dealt with raced-based discrimination (Blankenship 1993).

While the raw number of race complaints handled by the EEOC steadily rose into the early 1990s, the rate of complaints ebbed and flowed. At its peak in 1976, 10 of every 1000 non-white workers filed a race-discrimination complaint. By 1994, the rate had dropped to 2.5 per 1000. Race (and gender) discrimination also fell as a proportion of all complaints received by the EEOC, as “race and sex complaints accounted for almost 80 percent of all EEOC complaints in 1967 but less than half of all complaints by 1994,” replaced by age, disability, and color (Wakefield and Uggen 2004). Since that period, even the raw number of race complaints has begun to decline, as “trends in discrimination complaints to the EEOC reveal a major shift. Race discrimination complaints have fallen in absolute numbers, standardized rates, and as a proportion of all complaints in the past 25 years” (Wakefield and Uggen 2004).

In addition to receiving these individual complaints, the EEOC ensures compliance with antidiscrimination law by monitoring other government agencies and many private employers. Sufficiently-large private employers, currently covering over 40% of all private employees, must provide the EEOC with racial and gender workforce data via the EEO-1 form. A separate, more-detailed form, is required of the administrators of other federal agencies. As we'll see, this function creates its own difficulties for properly defining race.

When individuals bring complaints to the agency, they are expected to make a prima

facie case for racial discrimination. The EEOC's evaluation of this evidence and its decision to determine a prima facie case of employment discrimination is controlled by the 1973 United States Supreme Court case *McDonnell Douglas Corp. v. Green*. In deciding the case of a dismissed black mechanic/lab technician, the Court pointed federal agencies to the 1964 Civil Rights Act, reading Title VII to mean that complainants to any equal employment opportunities agency “must carry the initial burden of establishing a prima facie case of racial discrimination; this may be done by showing (1) that he belongs to a racial minority; (2) that he applied and was qualified for a job for which the employer was seeking applicants; (3) that despite his qualifications, he was rejected; and (4) that after his rejection, the position remained open and the employer continued to seek applicants from persons of the complainant's qualifications” (*McDonnell Douglas Corp. v. Green* 1973). While future cases have built on *McDonnell Douglas* – demanding a preponderance of evidence that acts were discriminatory, shifting the role of agency fact finders, etc. - the four prongs remain, as, “all the federal courts have subsequently adopted the order and allocation of proof set out in *McDonnell Douglas* for all claims of disparate treatment employment discrimination that are not based on direct evidence of discriminatory intent.”

It is the first prong, that the complainant “belongs to a racial minority,” in which I am obviously most interested. How is one expected to provide a “preponderance of evidence” that he or she “belongs to a racial minority”? What is the definition of race and blackness actually used by the EEOC? And how would employing a definition of blackness that is akin to the dynamic nominalism of blackness I have defended affect the number and outcome of complaints?

## **The EEOC's Multiple Conceptions of Blackness**

We must understand how the EEOC currently conceptualizes blackness if we are to understand how the adoption of dynamic nominalism would affect decisionmaking. The following, then, delineates the EEOC's current conception of race and considers the impediments to a better definition. I see three major internal reasons internal to the EEOC why the agency has failed to employ an accurate and appropriate definition of blackness. These are 1) the inconsistent, conflicting and sometimes fully-rejected definitions of race used by the agency, 2) a conception of discrimination that leads away from an individual's race and towards impact on a previously-accepted racial group, and 3) the divorcing of blackness from its attendant characteristics via a philosophy of post-racialism.

While I believe that these factors have lead the EEOC away from adopting a consistent social constructivist definition of blackness in the vein of dynamic nominalism, this chapter is not a plan for structural changes to the agency. As Maurice Munroe (1995) writes, there are plenty of suggestions for overhauling the agency, mostly through adding, subtracting or altering its powers of investigation and adjudication. The purpose tends to be the more efficient processing of individual complaints, though some, such as Munroe's, seek to overhaul the EEOC's very responsibilities. While I will discuss several of the EEOC's procedures and initiatives, I do so primarily to demonstrate how they affect the way in which the agency defines race and blackness.

It is obvious that the standard by which racial minority status is determined is extremely important in determining the federal government's potential response to discrimination. And yet, relevant federal agencies have no official policy for determining racial minority status in these cases. The EEOC instead utilizing varying and inconsistent definitions of race when interacting

with individuals, with employers, and with other federal agencies. In fact, EEOC guidelines explicitly refuse to define what it means to be a racial minority. As stated in the EEOC compliance manual's section on Race and Color Discrimination, “Title VII prohibits employer actions that discriminate, by motivation or impact, against persons because of race. Title VII does not contain a definition of ‘race,’ nor has the Commission adopted one” (Equal Employment Opportunities Commission 2011). The EEOC cites legislative guidance rather than philosophy to defend its supposed lack of definition.

While the EEOC explicitly follows the CRA here, Congress itself largely ignored what race meant in its creation of the act. This is unsurprising, as the United States Government has largely taken race and minority status for granted. The greatest discussions of race – surrounding the Constitutional Convention and the Civil Rights Movement, for example – dealt only with how to contend with members of unchallenged racial groups, and did not consider the validity of these categories. And most determinations of blackness or other non-white status have been arbitrary and path dependent (Pierson 2004). This is seen most clearly in the influence of form EEO-1 (Skrentny 2002), discussed in Chapter Three, which served as the basis for determinations by multiple bureaucratic agencies, and which almost arbitrarily defined minority status due to chance, efficiency, and the anticipation of needs. Similarly, Christopher Edley (1998) reports that there was almost no consideration of race or blackness during debates on affirmative action in the Clinton administration. Additionally, apart from *Griggs*, the by-definition path dependent precedents set by Supreme Court cases rarely systematically analyzed what it means to be black or a minority (Thernstrom and Thernstrom 1997), and even then these cases are largely decades old.

This is not to say that a lack of racial definitions, and thus the space made for self-

identification, is wholly arbitrary or simply pragmatic. The Office of Management and Budget's 1997 "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," which guides the EEOC's use of racial categories, stated, "Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible..." And on forms aimed at individuals, the EEOC typically employs language that follows the philosophies of self-identification and social construction. The example of racial discrimination on the EEOC's intake form for individual employees, for example, states, "If you feel that you were treated worse than those not of your race or you have other evidence of discrimination, you should check (✓) RACE," without stating what race means.

This has not, however, stopped the EEOC from listing categories of discrimination that individuals should consider racial. The above claim to not have adopted a definition of race is followed by support for the OMB's use of five racial and one ethnic categories. The use of American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White; and Hispanic or Latino are said to be "for the collection of federal data on race and ethnicity" only. But as we'll see, the EEOC's heavily reliance on data collection and statistics to demonstrate discrimination makes this is a distinction without a difference. If this data collection is used to demonstrate racial discrimination, then racial categories – and, as we'll see, racial definitions – are in fact provided.

The EEOC is also quick to point out that the OMB has stated that the six categories are "social-political constructs...and should not be interpreted as being genetic, biological, or anthropological in nature." This admonition, however, is followed by a list of what "Title VII's prohibition of race discrimination generally encompasses" – a list that looks awfully like a quasi-

biological and anthropological definition of race. According to the document, racial discrimination encompasses a mishmash of possible characteristics, including “Ancestry,” “Physical Characteristics,” “Race-Linked Illnesses,” “Culture,” “Perception,” “Association,” “Subgroup or ‘Race Plus’” and “Reverse Race Discrimination”. Explanations for these characteristics certainly resemble traditional definitions of race, including a geographical descent that overlaps with but is not necessarily identical with national origin, “a person’s physical characteristics associated with race, such as a person’s color, hair, facial features, height and weight,” and “cultural characteristics...such as a person’s cultural dress and grooming practices, or accent or manner of speech” (Equal Employment Opportunities Commission 2012). (Not all of the characteristics are actually part of what the EEOC believes makes up race. The addition of “Reverse” Race Discrimination, for example, is merely a chance for the EEOC to point out that while, “Some courts...take the position that if a White person relies on circumstantial evidence to establish a reverse discrimination claim, he or she must meet a heightened standard of proof...The Commission, in contrast, applies the same standard of proof to all race discrimination claims, regardless of the victim’s race or the type of evidence used.”)

The initial stages for individuals bringing discrimination claims contain incredibly similar inconsistencies between stated philosophy and actual implementation. But here it goes even further, explicitly defining each race in a quasi-essentialist way. The EEOC’s intake form asks, “What is your Race? Please choose all that apply” and then offers, just as the Census does, “American Indian or Alaska Native,” “Asian,” “Black or African American,” “Native Hawaiian or Other Pacific Islander,” and “White” as possible answers. Hispanic Origin and National Origin are separate, mandatory questions. This question replicates categories provided by the OMB’s Directive No. 15 (1997), which are meant to be “used not only to produce data on the

demographic characteristics of the population, but also to monitor civil rights enforcement and program implementation.” The OMB’s 1997 revisions purported to favor self-identification and anti-essentialism, stating that its standards,

underscore that self-identification is the preferred means of obtaining information about an individual's race and ethnicity, except in instances where observer identification is more practical (e.g., completing a death certificate);...do not establish criteria or qualifications (such as blood quantum levels) that are to be used in determining a particular individual's racial or ethnic classification; and do not tell an individual who he or she is, or specify how an individual should classify himself or herself.

And yet, the intake form still provides definitions for each of the racial categories. And these are not simply what race discrimination “generally encompasses,” as above, but hard and fast definitions for each race, based largely on ancestral geographical origins. “Black or African American” is somewhat-circularly defined as, “A person having origins in any of the black racial groups of Africa. Terms such as 'Haitian' or 'Negro' can be used in addition to 'Black or African American.’” And white, for instance, is, “A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.” These racial-geographical definitions are actually as far from social constructivism as any federal agency is likely to get.

While the Uniform Intake Questionnaire (Equal Employment Commission 2012a) ostensibly gives individuals the right to self-identify racially, it also grants these complainants the right to name the race of others. Question 8 on the form reads, in part, “Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance?...If your complaint alleges race discrimination, provide the race of each person...” While investigations following the complaints could theoretically challenge the identifications provided, the *prima facie* case is made before any such interviews or records reviews would take place. More, my readings of available proceedings have not contained any evidence that the



agency ever takes issue with the racial ascriptions of others' supplied by complainants.

The EEOC's consideration of race differs again when aimed at other federal agencies, although the definition is similarly inconsistent. This is best seen in the instruction manual for EEOC Form 462, which the EEOC employs to fulfill its responsibility to produce an internal report on claims of discrimination within other federal agencies. Covering each fiscal year, the Annual Report on the Federal Workforce requires agency administrators to submit their own data, which the EEOC then aggregates. The data are submitted through the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints, generally referred to as EEOC Form 462. While the submissions and aggregated data are both available only to certain agency members, the form and the detailed instruction manual provided to agency administrators are publicly available.

In these instructions to federal agency administrators, the EEOC goes against its general claim that it does not define race, providing respondents with clear guidelines as to how to fill out the form. First, the instructions provide the same racial and ethnic categories advised by the OMB. Then, the instructions provide their own explicit, largely geographical, definitions of the OMB's typically-undefined categories. The tautological definition of blackness provided, for example, is, “Black or African American – persons having origins in any of the Black racial groups of Africa,” implying at least a “racial” rather than “cultural” or self-identification-based conception of blackness. Each of the other race categories – American Indian/Alaska Native, Asian, Hispanic of Latino, Native Hawaiian/Other Pacific Islander, and White – also depends on geographical origins, though none uses the phrase “racial group” or even “race”. The only category which does mention race is the form's version of a multiracial category. But in another instance of inconsistency, the final multiracial category eschews mentions of actual geographic

origins, and instead relies on self-identification, reading, “Persons of Two or More Races – persons who *identify* with two or more of the above race categories” [emphasis added].

A third EEOC perspective on race, one with its own definitions and inconsistencies, is seen in EEOC-employer interactions. The practical move away from self-identification and social construction is glaring in the way in which the EEOC collects the majority of its data on race and employment. Current rules require most mid- to large-sized private firms to report on the gender and racial composition of their workforce. These firms cover over 40% of all private sector employees, and the information allows the EEOC to make claims of institutional discrimination via statistical evidence.

Firms provide the information by filling out form EEO-1, the creation of which was detailed in Chapter Three. When filling out the EEO-1 form, employers are not asked to survey their workforce, but rather to substitute their own judgments for the racial self-identification of their employees. This sort of counting by ascription is justified in the OMB's 1997 Review, which guides the EEOC's use of racial categories. The Review's above support for self-identification is followed by an acknowledgment “recognizing that in some data collection systems observer identification is more practical.”

The purposes to which the EEOC puts that data can only be fulfilled, however, if most people answer for themselves in the same way that the world would answer for them. This is often, though not always the case. While studies have shown 95%-99% agreement between self-identification as black and third-party ascription as black, areas of disagreement matter greatly. More, we saw in Chapters One and Two that the making of race is context-dependent, and that a majority of black individuals report shifting racial self-identification as salience changes. It is thus not possible for third-party ascription to accurately mirror self-identification. By collecting

racial data through the ascription of others, the EEOC is either implicitly supporting a definition of race based on the judgment of others, or it is wrongly assuming that racial self-identification will be identical to social ascription. Importantly, both belie the agency's explicit support for self-identification as the definition of race and blackness.

This discussion has demonstrated that the EEOC does not maintain a consistent definition of racial minority status. And while the most-often professed definition is either one of social construction or eliminativism, this is not typically how the agency defines race to its partners. It should be unsurprising, then, that the EEOC and claimants are often at a loss as to how to fulfill the first prong of *McDonnell Douglas*. Without a proper definition of racial minority status, black complainants cannot know how they might defend their race through either logic or evidence. More important, the actual process of social construction becomes lost in the making of prima facie discrimination claims. And because my particular version of social constructivism places special import on the making of blackness, this confusion of definitions obscures much of what makes blackness matter and curtails accurate understandings of racial discrimination.

Both the inconsistent standard and the confusion as to how one is to prove racial minority status is seen in my examination of racial discrimination claims. In the sampling of several hundred complaints of race discrimination, not one asked complainants to demonstrate minority status as demanded by the first prong of *McDonnell Douglas*. The word of complainants was taken as gospel. The de facto standard, then, is self-identification, as the check mark on form EEO-1 is considered sufficient evidence that one is a racial minority. Meanwhile, an analysis of dozens of suits initiated by the EEOC based on data collection shows no examination of whether the employees and applicants named as black truly are. Faith is placed in employers to properly identify the race of employees and in demographers to properly assess the racial makeup of the

applicant pool. There is no investigation into whether prospective applicants and employees even self-identify as black, thus making ascription by other the de facto definition of race.

### **The Cloud of Post-Racialism and Color Discrimination**

Unfortunately, cutting through the confusion and removing the inconsistencies is not simply a matter of adopting one of the many definitions of race that the EEOC sometimes proffers. As mentioned, there are philosophical and practical trends that make the adoption of a better definition of blackness less likely. The two most relevant factors that I will address are the philosophy of post-racialism and the use of statistical evidence to demonstrate employment discrimination.

The ability of the EEOC to focus on what makes race and blackness has been undercut by a philosophical and policy push to remove race from consideration, or at least lessen its centrality across the board. Congressional, Supreme Court, and public pushes toward post-racialism and colorblindness have led to policies that explicitly and implicitly make race a less-available category for antidiscrimination efforts. A coherent definition of blackness is near impossible when those defining the category do not believe in its importance. Three decades of presidential speeches and Court decisions, and a recent EEOC initiative, are the most relevant moves in this direction.

The push toward post-racialism within the EEOC began in earnest with President Ronald Reagan, who pointed directly at the agency while “articulating a civil rights policy that declared hiring discrimination resolved, portrayed earlier federal policy as promoting racism against White men, and, more generally, viewed race-based political mobilization as a threat to the individualized nature of American democracy” (Wakefield and Uggen 2004). A consistent

conservative push in this direction reached its apex when the Supreme Court recently favored a post-racial colorblindness across all government programs. As Mario Barnes, Erwin Chemerinsky, and Trina Jones (2010) detail, “Four Justices (Scalia, Thomas, Roberts, and Alito) have voted essentially in favor of constitutional colorblindness, which works to achieve the post-race goal of eradicating race-based decision making. At present, these Justices lack a locked-in majority only because Justice Kennedy seems to allow for a very narrow set of circumstances where he believes race can still be lawfully considered.”

The EEOC, while not consistently taking up a post-racial philosophy, has followed the Court and conservatives, and shifted toward policies that encourage a belief in colorblindness. Ironically, they have done this through an increased focus on color discrimination. This is primarily seen in the promotion of color-based discrimination claims at the expense of race-based claims, and an implicit support for divorcing phenotype from race. While there are certainly solid normative and policy defenses for an increased focus on color discrimination, the EEOC's chosen method has weakened race and blackness as a category for antidiscrimination, and disambiguated the characteristics that indicate race from race itself.

While color had been included in Title VII as one of five categories on which employers could not discriminate, Joni Hersch (2011) indicates, “There is no definition of skin color that has been promulgated by the federal government that can be used to classify individuals into groups based on skin color.” For years, color was instead treated as either identical to, or as a close proxy for, race. The agency thus received few charges of color discrimination, and nearly all of those also contained charges of race discrimination.

The current official definition of “Color Discrimination” provided to potential complainants does not, however, make color a proxy for race, although the agency's materials

sometimes claim that it does. An individual can claim color discrimination “when a person is discriminated against based on his/her skin pigmentation (lightness or darkness of the skin), complexion, shade, or tone. Color discrimination can occur between persons of different races or ethnicities, or even between persons of the same race or ethnicity. For example, an African American supervisor violates Title VII if s/he refuses to hire other African Americans whose skin is either darker or lighter than her/his own.” The EEOC is somewhat more explicit when explaining color discrimination to officials of other federal agencies. The manual explains that color is a protected class under Title VII, and employment discrimination is impermissible on that basis. It points out, however, that,

The statute does not define “color.” The courts and the Commission read “color” to have its commonly understood meaning – pigmentation, complexion, or skin shade or tone. Thus, color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person. Even though race and color clearly overlap, they are not synonymous. Thus, color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity. (Equal Employment Opportunities Commission 2011)

It is worth noting that here, too, the primary example of color discrimination is intraracial, involving a “brown-complexioned African American” harassing a “light-complexioned African American”. So although discrimination against an individual because he is black or because he has black skin are often accurately conflated, the official definitions consider them wholly separate.

A very slow rise in color discrimination claims beginning in the early 1990s partially led the EEOC to launch the E-RACE (Eradicating Racism and Colorism from Employment) Initiative in 2007. The agency had noticed that the number of filed charges of color discrimination had slightly but steadily risen from 374 in FY 1992 to 1241 in FY 2006. The EEOC explained that E-RACE was necessary largely because, “color discrimination in employment seems to be on the rise,” citing the increased charges filed, a single academic survey

on the relationship between skin color and pay, and a one-state survey on employer preference for light-skinned applicants. The EEOC (2007) also asserted that “new forms of discrimination are emerging,” mainly a result of interracial marriage and changing racial demographics in the workforce. Now, it is claimed, the “issue of race discrimination in America is multi-dimensional. Over the years, EEOC has received an increasing number of race and color discrimination charges that allege multiple or intersecting prohibited bases such as age, disability, gender, national origin, and religion.” While the agency might be applauded for claiming to adopt a more intersectional definition of discrimination, it was actually separating out the forms of discrimination that make up racial bias. And it explicitly claimed that singular charges of racial discrimination were less appropriate than they had once been.

In every one of the E-RACE Initiative's statements of intent and method, color was given separate and equal billing with race, as the equally important aims were to “ensure workplaces are free of race and color discrimination.” E-RACE set five main goals of 1) better data collection, 2) improved consistency in processing claims across offices and complaints, 3) the development of new strategies, theories, and training methods in the face of new dimensions of discrimination, 4) the publicizing the EEOC's role combating race and color discrimination, and 5) further engagement with the public to encourage a voluntary end to racial and color discrimination. Its planned method of “combat[ing] race and color discrimination in the 21st century workplace,” would be to “identify issues, criteria and barriers that contribute to race and color discrimination in the workplace;” streamline the administration of discrimination claims, publicize the continued existence of race and color discrimination, and improve relationships with groups representing both employees and employers. These were to be implemented between FY2008 and FY2013.

The public received the EEOC's message, and charges of color discrimination immediately exploded. Hersch (2011) explains, "The E-RACE Initiative seems to have raised awareness about color as a potential source of discriminatory treatment." This is evidenced in the enormous rise in charges of color discrimination following the Initiative. In 2006, 1,353 charges of this sort were filed. In 2008, following the Initiative's announcement and during the first year of its implementation, that number more than doubled to 2,827. That latter number was nearly equal to all charges of religious discrimination received by the agency that year. The slow increase in color-based claims prior to the Initiative indicates that a portion of this rise stems from a greater public recognition of color discrimination, and the greater acceptability that such discrimination is real and sometimes race-independent. But the dramatic change alongside the Initiative's implementation indicates a much stronger affect from government signaling.

Crucially, there is evidence that the Initiative has enhanced a growing public perception that color discrimination is often wholly separate from racial discrimination. Prior to the Initiative, nearly all charges of color discrimination had an attendant charge of race discrimination. But the color discrimination carve out increased dramatically in 2007 following the inception of E-RACE. While most color-based complaints still list race as a factor, Hersch argues that "what is perhaps most noteworthy" and "surprising" during FY 2009, "is that 15 percent of charges of color discrimination do not include race."

Attendant with E-RACE, the EEOC has further separated color from race by making color-based charges that do not also charge race discrimination just as successful as those that do. In Hersch's study of recent color discrimination charges, she found that, "the distribution of the strength of the claim is quite similar regardless of whether race is included as a basis in addition to color." The EEOC thus provides no incentive to see color-based discrimination as



racial in any way.

The separation of color and race is especially important, because, as Angela Onwuachi-Willig and Mario Barnes (2005) point out, “While some federal courts once recognized race as a socially constructed and fluid construct, most now treat race as a purely physical concept.” They cite *Bennun v. Rutgers State Univ.*, and the Court's claim that racial “discrimination stems from a reliance on immaterial outward appearances...” They write,

This understanding of race as a physical concept is most evident in the way courts have treated the last prong of the prima facie case test under the *McDonnell Douglas* burdenshifting framework. Under this prong, an inference of racial discrimination is created (assuming the other three factors exist) if the plaintiff was treated differently than a similarly situated individual *outside* of his or her racial group, a factor that makes it much more difficult for a plaintiff to prove discrimination if he or she was replaced with someone of his or her own race (Onwuachi-Willig and Barnes 2005).

If this is true, separating the physical indicators of race from race itself would necessarily make race an empty concept. If race discrimination is a purely physical concept, but definitions of color discrimination state that physical factors are not a proxy for race, then a race discrimination claim on top of a color discrimination claim is at best redundant. And at worst, making a racial discrimination claim that accounts for race's socially constructed nature is all but impossible.

In sum, shifting to a color-based definition of discrimination and following this with a claim of colorblindness obscures an appropriate definition of race and blackness. In doing so, it makes fighting racial discrimination much more difficult. As Barnes, Chemerinsky, and Jones (2010) argue, there will be “few remaining lawful remedial programs should post-race become a jurisprudential reality,” and antidiscrimination policy would “have to be substantially retooled to survive post-racialism.”

### **The Move to Disparate Impact**

The focus on an individual's race – and the way in which it is made and matters – was

also lessened by a shift in the EEOC's conception of discrimination. The agency's original conception followed Title VII, and largely complemented the way in which I define race. The original standard of discrimination involved “disparate treatment” of individuals, consisting of literal, overt discrimination against single employees and applicants. Title VII directed the EEOC to combat intentional discrimination of employers against actual and potential employees. Discrimination complaints were initiated by employees and applicants complaining of direct racism, what Stephan Thernstrom and Abigail Thernstrom (1997) call “plain old-fashioned bias.” The standard is concerned with the “mind of the discriminator,” and the plaintiff must demonstrate the defendant's conscious or unconscious discriminatory motive. Very simply, unlawful disparate treatment occurs, according to the CRA, when an “employer... treats some people less favorably than others because of their race,” or because of stereotypes of their race.

Very quickly, however, the EEOC's model of discrimination shifted from “disparate treatment” to “disparate impact”. And the EEOC's attendant shift toward the use of statistics rather than individual acts to discover discrimination is a major reason why the race of individuals is rarely analyzed. By conceptualizing discrimination as something to be proved primarily through large data sets, the actual definition of that group and the making of individuals' races have both become heavily obscured.

While Title VII was clear about a requirement of intent, the shift to disparate impact actually began before the Civil Rights Act was even written. In early 1961, Vice President Lyndon Johnson took the chair of President John F. Kennedy's Committee on Equal Employment Opportunity (PCEEO). Johnson immediately suggested an ideological shift from President Eisenhower's antidiscrimination policy for government contracts, away from stopping cases of intentional discrimination against individuals and single firms and toward an

“affirmative duty to employ applicants.” This would only be possible by shifting from intentional discrimination against individuals to group-level oppression (Katznelson 145). By 1963, the PCEEO was pressuring corporations to collect race-based statistics on their workforces in order to make affirmative steps possible (Thernstrom and Thernstrom 1997, 427). In fact, the idea for form EEO-1, the key statistical form used to ferret out discrimination, stemmed from an administrator's chance visit to the PCEEO, whose offices sat next to those of the EEOC (Skrentny 1996, 127-8). And in the weeks after the CRA's passage, the White House held a conference that concluded, “Discrimination under Title VII included institutional, as well as intentional, racism” (Thernstrom and Thernstrom 1997, 427).

Even with this White House support, however, the EEOC did at first follow Title VII's “legally mandated difference-blind model of justice.” Cases were received and investigated on an individual basis, with a focus on acts of overt racism. But the EEOC soon followed the White House's lead and reinterpreted employment discrimination primarily as a group-level phenomenon in which disparate treatment was less important and common than disparate impact. Disparate treatment, “which required evidence of intent to discriminate, was replaced by a disparate impact or results standard, in which discrimination could be inferred from statistical patterns. It might not be deliberate; it might not even be 'conscious,' but it was still 'institutional discrimination' if it left African Americans with less than their equal share of jobs at every level” (Thernstrom and Thernstrom 1997, 426). Disparate impact, then, could sometimes be indicative of disparate treatment, but was certainly not a proxy for it. Under the disparate impact standard, an individual plaintiff must point to a specific action or practice, and demonstrate that it causes a significant impact on the racial group rather than on the plaintiff alone. The EEOC and the courts have decided on a case-by-case basis whether the disparate impact shown is sufficiently large to

entail discrimination, as no uniform standard has ever been established.

Thernstrom and Thernstrom (1997) attribute the EEOC's actual shift to disparate impact and statistical discrimination largely to Alfred E. Blumrosen, the agency's first compliance shift who ran the organization for a largely-absent Franklin Roosevelt, Jr. According to them, Blumrosen “scorned the protection as inadequate and much too slow,” (425) and followed the executive branch's lead, massaging the plain language of Title VII to include a requirement that companies report statistics on the racial and gender makeup of their employees. John Skrentny's (2002) reading of Blumrosen and other EEOC workers reaches the same conclusion, though it is more institutional than personal. It quickly became clear that the available staff and budget was inadequate to deal with the overwhelming number of complaints the organization immediately received. A large backlog rapidly developed, and was only made worse by the “time-consuming and cumbersome” nature of actually investigating racial discrimination (88). It was clear that the agency would not “succeed” with such a focus. In Skrentny's interpretation, EEOC officials, “behaving like typical American bureaucrats, decided to rationalize the enforcement process, first by developing quantitative indicators of the discrimination problem of blacks. The goal was to attack the discrimination problem in the most effective and efficient strategy possible” (Skrentny 2002, 89). Ira Katznelson's (2005) reading is similar, asserting that the EEOC simply did not have the resources in terms of time or staff to deal with individual complaints and rationally sought out group-based solutions (146).

Even accounting for the backlog, EEOC leaders found that all individual acts of racism did not add up to the enormous racial opportunity gap the organization encountered. (Katznelson 2005, 146) It was clear that the agency was not receiving a level of complaints commensurate with actual discrimination. Whether this is because, among other things, victims did not bring

complaints (Hirsh and Kornrich 2008), the unconscious nature of some discrimination (Munroe 1995), or non-racial acts leading to prejudicial impact (Bonilla-Silva 2003), waiting for complaints was derided for being ineffective rather than for being politically or philosophically undesirable.

Meanwhile, Congress, the White House and the EEOC were all being lobbied by civil rights activists who wished to give the agency cease-and-desist authority and enforcement powers. At the same time, demonstrations and rebellions surged across American cities, more often demanding equal jobs and equal pay. Outside pressure to expand the EEOC's purview and abilities was happily accepted by administrators (Skrentny 2002, 88).

Given the backlog, “missing” cases, inside bureaucratic needs, and outside pressure, the individual-level disparate treatment standard did not last long. In March 1966, the EEOC sent its first racial reporting form to every company and union under its purview in order to begin compiling the data that would indicate racial patterns of employment and allow disparate impact to be found. Nearly all federal agencies and any company with at least 100 employees – the latter now accounting for over 100 million American workers – were asked to supply comprehensive employment statistics on race and gender. And by 1968 the EEOC had an enormous database with which to prove disparate impact, largely through quantitative evidence of statistical inequality. The EEOC used this data to enact its philosophical shift through which “discriminatory intent might be legally inferred.’ The burden of proof shifted from specific acts of discrimination to the justification of overall patterns of exclusion” (Katznelson 146-7).

Using the new standards, the EEOC began arranging conciliation agreements with discriminating employers based on its landmark 1966 agreement with the Newport News Shipbuilding and Drydock Company. Data on race and hiring in the industry was used to force

the company to seek proportional racial representation in its workforce as a remedy for statistical discrimination. The next year, the EEOC called a public forum in which it very loudly presented data to the North and South Carolina textile industries and demanded that the employers either defend racially disproportionate employment or face sanctions. According to Skrentny (2002, 89), “Notice was served: employers – if they wanted to avoid such unpleasant encounters with the federal government – should hire percentages of qualified blacks that came near to their proportions in the population.”

The shift within the EEOC was most fully realized under Chairman Eleanor Holmes Norton. As EEOC Chairwoman, Holmes Norton led the creation of an Office of Systemic Programs (OSP), which “targeted employers based on EEOC work force data and commenced investigations by a § 707 commissioner's charge” (Munroe 1995). In order free up maximum resources for these targeted systemic investigations, she helped create the Rapid Charge Processing System (RCP), which encouraged speedy settlements of individually-brought complaints.

While Thernstrom and Thernstrom (1997) portray Blumrosen's shift to disparate impact as clearly against lawmakers' intent, they acknowledge that he found absolutely no immediate objection in Congress, the Courts, or the White House. Even with Democrats out of the White House, the Nixon administration, “far from opposing these new measures, expanded the policy by further applying the doctrine of 'disparate impact' (rather than 'disparate treatment')” (Katznelson 2005, 147) through enforcement of Johnson's Philadelphia Plan in the construction trades and his attorney general's legal support for the idea that “the obligation of nondiscrimination' entails taking into account the racial implications of 'outwardly neutral criteria' that might, nonetheless, produce deeply unequal outcomes by race.”

The EEOC's shift also found support within the courts, most notably in *Griggs*, the Supreme Court's first ruling on the EEOC's use of disparate impact and statistical discrimination. Whether we read the unanimous decision in *Griggs* as support for the spirit and letter of antidiscrimination law or, as Thernstrom and Thernstrom (1997, 431) do, “the opening chapter in a dreary story of judicial creativity and confusion involving not only Title VII but the Fourteenth Amendment as well,” it was certainly an affirmation by the Supreme Court of the EEOC's shift toward a disparate impact.

The shift also found essentially zero immediate outcry from within Congress. In fact, Congress's first official reaction to disparate impact was a measure of support found in the 1972 decision to strengthen both Title VII and the EEOC's powers. The Equal Employment Opportunity Act extended the agency's purview to states, universities, and employers with 15 rather than 25 employees. More importantly, the EEOC was given the right to initiate its own suits based on statistical discrimination rather than wait individuals to bring it cases, and to enforce affirmative changes, even through racial quotas. At the very least, it solidified the “creative administration” of Title VII through data collection and disparate impact. And when *Wards Cove Packing Company v. Atonio* weakened *Griggs*, Congress passed the Civil Right Act of 1991 to undo those changes, “reaffirming Congressional (and tepid Republican Presidential) support for an expansive reading of discrimination and for the use disparate impact theory.”

I am not making an argument against the use of disparate-impact standards, specifically, or against statistical attacks on discrimination, more generally. It could be argued, as Munroe (1995) has, that Congress should transform the EEOC to deal only with broad-based institutional discrimination and remove the agency's responsibility for individual discrimination charges. The claim here is about the conceptual blinders that such a shift creates. As long as a majority of the

EEOC's cases remain complaints received from individual employees and applicants, thinking about discrimination as primarily a group-based phenomenon will necessarily hamper the ability of the EEOC, employers, and employees to see how race is lived and made in America. While Elizabeth Hirsh and Sabino Kornrich (2008) argue that the Court's interpretation of all racism as a group-based phenomenon should warn against a simple equation of disparate treatment with individuality and disparate impact with groups, the focus has certainly shifted. Individual experiences of discrimination or how blackness is made and experienced, while still occupying a majority of the EEOC's caseload, take a conceptual backseat. Thernstrom and Thernstrom (1997, 426) go as far as to claim that, through the use of disparate impact, "The initial commitment to 'the right of blacks to be treated as individuals' was fading, replaced by an interest in policies that civil rights activists thought more in the 'group interest' of African Americans."

As successful claims were increasingly made by the EEOC on the basis of statistics indicating disparate impact, employers understandably became less concerned with disparate treatment of their individual employees and more concerned with maintaining an acceptably representational employee core. Their role in making blackness and discriminating on that basis becomes obscured by a focus on mirroring the racial make up of the employment pool. The process by which individuals' blackness is made, and made to matter, is largely ignored, as analysis of aggregated data replaces the demonstration of discriminatory actions.

This interpretation plays itself out in the impact a data-centric approach of disparate impact that the race standards created by the OMB have had on the EEOC's conception of blackness. The OMB's 1997 "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," which officially guides federal agencies and to which the EEOC often publicly refers when explaining its decisions, concluded that, "*Foremost consideration* should be



given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any federal program” [emphasis added]. So federal agencies, including the EEOC, have been encouraged to ignore their own internal, as well as legislated, standards of racial minority status in favor of less-proper definitions that ease data collection. Maintaining what it feels is an accurate definition (or non-definition) of race is thus less important to the EEOC than collecting statistics to fight discrimination. Even the attempt to accurately define blackness disappears.

### **Away From Disparate Impact and Further Away from Race**

The use of disparate impact theory by the EEOC, employers, and various governments has recently come under attack. Perhaps strangely, however, the recent move away from disparate impact theory has not brought back a focus on the race of individuals, but actually further removed it from the equation. The current Supreme Court has severely limited the use of disparate impact theory, and in doing so set an explicit precedent for using color-blindness to determine whether discrimination occurred in employment decisions.

In deciding *Ricci v. DeStefano*, involving New Haven, Connecticut's method for determining promotions within its fire department, the Court's formalist decision “institut[ed] a color-blind standard to define discrimination under Title VII” (McCormick 2010). The five-justice majority held for the first time that considering race in an attempt to overcome disparate impact was itself unacceptable. In most cases, employers could no longer use color-conscious policies to create what they considered fair employment processes. An expected differential impact on racial minorities would not be sufficient to justify the consideration of an employee or

applicant's race. Further, affirmative plans to avoid disparate impact for black candidates would be viewed as disparate treatment of white candidates, as the Court chose “to equate the desire *not to discriminate against two groups* (or at least not to get sued for discrimination) with a desire *to discriminate against another group*. In other words, that knowledge of the races of individuals or race consciousness automatically equated with race discrimination” (McCormick 2010).

The minority claimed that Congress's intent in Title VII was clearly to focus not just on employer motivation, but also on consequences, and that disparate impact was included in the statute's original language. More, both the spirit and letter of disparate treatment and its evolution were being warped by equating the voluntary decision to not discriminate against one employee with discrimination against another. Both employers and employee groups, in unusual agreement, largely disapproved of the majority's decision, as it made claims of discrimination much more difficult to make while severely hamstringing voluntary employer programs to end racial discrimination. Scholars of both the Court and race have noted several negative consequences of the Court's decision, most importantly the enormous difficulties created for employers wishing to avoid disparate racial impact without running afoul of disparate treatment, and the transformation of racial justice into a “zero-sum game, with every promotion given to a person of color an injury to a white person.” According to Marcia McCormick (2010), only strict legal formalists supported the decision.

For my purposes and for the EEOC's ability to define race and blackness, the most important effect of weakening disparate impact is the removal of race as an acceptable consideration. The specific way in which each group interacts with the world, the dynamism, is replaced by an equivalence between racial groups. Race-based remedies to race-based discrimination become less available. And the EEOC would thus, in determining what was

considered racial discrimination, have to take another step toward color-blindness and away from seeing the unique effects of blackness.

### **The Current Landscape**

Even with the EEOC's focus on institutional discrimination and the agency's expanded power to initiate its own complaints, a vast majority of race discrimination cases continue to stem from complaints brought by individual victims. Individuals who feel they are the victims of employment discrimination may choose to file a Charge of Discrimination with the EEOC. In FY2010, 99,922 individuals filed such employment discrimination charges with the agency; 35,890 of those charges were race-specific (EEOC Office of Research, Information and Planning 2011). And most of these charges "focus on isolated incidents of discrimination" (Munroe 1995). Upon receiving a complaint, "The EEOC investigates these charges and attempts to resolve the charge through mediation or informal methods" (Hersch 2011). The more formal methods begin with a preliminary interview with the alleged victim and the serving of official charges. If the investigators find strong prima facie evidence of employment discrimination, which occurs in about 20% of cases, the EEOC starts a full-fledged investigation. The investigation might include, among other things, multiple interviews, reviews of workforce data, and an examination of personnel records. The 60% of cases in which moderate prima facie evidence is found might lead to informal mediation through the EEOC's Dispute Resolution program before any similar formal investigation. And the final 20% result in quick dismissal, and little more than informing the employer of the charge and granting the employee the right to sue privately (Equal Employment Opportunities Commission 2004).

Obviously, an act of discrimination does not automatically lead to a complaint. In fact,

Munroe claims that a majority of victims of race-based employment discrimination do not file charges. As Hirsh and Kornish argue, “Before [individuals] can file a formal complaint, workers must identify their experiences as unlawful—rather than simply unfair—and subject to legal redress. In other words, workers must “name” the workplace behavior as discriminatory, “blame” the employer as responsible, and formally “claim” the injurious event to regulatory agents in the hopes of remedial action.” Munroe goes further, claiming that even individuals who name and blame must understand their legal protections and how to invoke them, as well as have the resources, expectations of success, and emotional desire to go through the process. Sara Wakefield and Christopher Uggen (2004) found that the rate of race complaints depends, in varying degrees, on the legal opportunity structure, macroeconomic performance, political climate, compensation structure, social inequality, knowledge of grievance forms, and demographic structure.

Partially to ferret out cases of discrimination that do not lead to complaints, and partially to seek out systemic discrimination, Congress granted the EEOC the power to itself sue employers in 1972. The agency can only do so, however, once its entire charge processing system – including a full investigation and attempted settlement – is exhausted. And so,

Although the EEOC now has the power to sue, its administrative procedure continues to resemble that of these early FEAs. It is complaint-driven. A formal charge starts its investigatory process and it must investigate all charges. It also focuses primarily upon conciliation, has no power to impose sanctions, and may only sue when conciliation has failed. Furthermore, it is not required to sue, even when conciliation has failed (Munroe 1995).

As indicated earlier, I am most concerned with the initial stage of the charge process, in which a *prima facie* case of discrimination is attempted. This is largely because it is the only stage at which defining and defending the plaintiff's race is officially necessary. But it is also because very few cases make it past both this stage and/or early conciliation. Final litigation in employment discrimination cases is very uncommon, as “the vast majority of employment

discrimination cases end in pre-litigation Equal Employment Opportunity Commission (EEOC) mediated resolutions, voluntary dismissals, or settlement before trial” (Lanvers 2007).

For the EEOC to find a *prima facie* case of discrimination following a complaint, the plaintiff must meet the burden outlined in *McDonnell Douglas* and discussed above. Again, the complainant must demonstrate that she is a racial minority rejected for a position for which she was qualified and that the employer continued to seek similarly-qualified applicants. The 1981 Supreme Court Case *Texas Department of Community Affairs v. Burdick* provided a test of *McDonnell Douglas*, and increased the difficulty for plaintiffs. In ruling on an alleged case of gender discrimination in employment, the Court ruled that fulfilling each prong in order to make a *prima facie* case requires the plaintiff provide a preponderance of the evidence that the employer's actions were discriminatory. The defendant has no responsibility to do anything but defend its stance, and needs only meet the low burden of providing an alternate explanation that “raises a genuine issue of fact.” Failing to meet the burden means that the *prima facie* case disappears and the finding of discrimination requires a full inquiry.

Partially because of the low burden, outcomes in race discrimination cases currently heavily favor defendants, as “only a fraction of charges that are filed with regulatory agencies are resolved with outcomes favorable to complainants” (Hirsh and Kornrich 2008). From 2005 to 2008, 63.3% and 68.6% of race discrimination charges ended quickly with the EEOC not even finding “reasonable cause”. Merit resolutions fluctuated at a much higher rate, though they topped out at 20.1% in 2006 and went as low as 8.3% in 1997. (EEOC, Race-Based Charges: FY 1997–FY 2008) Hirsh and Kornrich (2008) argue that “the small proportion of reasonable-cause cases is largely a reflection of the EEOC’s administrative process, its limited investigative resources, and the difficulties faced by investigators in uncovering unambiguous evidence of

discrimination, rather than an indication that workers predominantly bring grievances in error.” And in a similar study of 2006 race discrimination complaints, Charlotte Lanvers (2007) found that “only 11.7% of these claims resulted in a settlement favorable to the charging party, “and while an additional 3.9% were deemed to have reasonable cause...only 1.1% of all charges that were also deemed to have reasonable cause resulted in a successful conciliation.”

### **The Impact of a New Conception of Blackness**

It is very likely that *any* change in the EEOC's definition of blackness – to dynamic nominalism or another standard – would indeed affect the outcome of charges. Even though the EEOC has, like any major bureaucracy, standardized its claims process and decisionmaking, outcomes have never been fully consistent. As Hirsh and Kornrich explained, “Despite this theoretical consensus, in practice, the boundary between discriminatory and fair conduct is difficult to locate. Whether a particular behavior or practice is deemed discriminatory is subject both to dispute and to change.” Variations in claims and outcomes have been strongest over time, region, industry, and type of charge.

In their empirical study, Hirsh and Kornrich found that both the number of charges and the adjudication of those charges varied based on the size and racial and gender composition of a company's workforce, as well as the number of minority supervisors. They also found that the verification of claims was affected by industry, affirmative action requirements, and other institutional factors. Most importantly, this is largely because institutional variations “affect...regulatory agents’ interpretations of potentially discriminatory experiences.”

In a study of antidiscrimination cases focusing primarily on disability status, Lanvers (2007) found that the dominant factor affecting the success of claims was the EEOC office and

subsequent court handling the case. Comparing the Eastern District of Pennsylvania with the Northern District of Georgia, she found that, “the variance between district courts contributes to a good degree of variation in employment discrimination case outcomes.” Most relevant here, Lanvers found that race, gender, and age cases assessed only on the merits in Pennsylvania – accounting for 81.8% of dispositions dealing with race, gender, or age discrimination – resulted in settlement. Only 59% of similar cases in Georgia were settled. Pro-defendant dispositions in all cases were more than twice as likely in Georgia as they were in Pennsylvania.

Finally, the philosophy and focus of EEOC administrators have had their own effects. As the agency is “directed by political appointees and the enforcement prerogatives of the president,” (Wakefield and Uggen) ideological leanings and the initiatives they inspire have largely affected the raw number of discrimination claims, as well as their dispositions. This was seen most clearly in the transition from Holmes Norton's leadership to that of Clarence Thomas. Under the latter, a less aggressive agency and a move away from the Rapid Charge Processing System (RCP) significantly diminished the speed with which claims were process, and at the same time increasing the raw number of charges while decreasing their success.

### **Incorporating the Dynamic Nominalism of Blackness into the EEOC**

There have been a few academic suggestions for incorporating the way race, or at least racism, actually exists into antidiscrimination policy. For instance, Charles Lawrence III (1987) explains that the unconscious nature of much contemporary racism should lead the Court and federal agencies to more-fully incorporate the racial “cultural meaning” of actions into determinations of discrimination. Ann McGinley (1997) makes a similar argument amount unconscious racism and government “neutrality” in race-specific policy. Enrique Schaerer

(2010) argues for a new “race plus” understanding of racial discrimination to account for what he considers a relatively new and different-in-kind phenomenon of intragroup discrimination. And Melissa Saunders (1997) writes that claims of colorblindness have led to a, “mounting confusion about the basic evil to which the [Equal Protection] clause is directed,” and so a re-evaluation of the original meaning of racial discrimination is necessary.

None of these suggestions, however, take the socially constructed nature of race, let alone a specific social constructivist definition of blackness, as its focus. Perhaps this should not be surprising, since Onwuachi-Willig and Barnes (2005) point out that “in 1964 when Title VII was enacted, it was not necessary to explicitly discuss the ways in which race was socially constructed because it was clear at the time that, in the eyes of much of white society, no black people were acceptable.” And the authors argue that what they claim is the agency's physical conception of race, “hardly leaves any room for analyzing discrimination based upon socially constructed definitions of race, including distinctions that are made between jobs that an employer deems appropriate for certain racial groups and distinctions that are made between members of the same racial group...” And yet the EEOC's professed support for social constructivism – as well as its accuracy – means the agency needs to look closely at adopting a specific and specifically-socially constructed definition of blackness. At the very least, the agency should adopt *some* consistently professed and applied definition of race in order to reduce the obfuscation discussed throughout the chapter.

I believe that the accuracy of the dynamic nominalism of blackness, for which I argued in the previous chapters, should lead the EEOC to a similar definition. On top of the benefit of simply adopting what I argue is the correct conception, there are numerous advantages to adopting dynamic nominalism as the agency's definition of blackness. Dynamic nominalism



offers the agency a consistent and defensible definition of blackness, one which involves an observable process. It will allow the EEOC to provide a clear method for complainants to fulfill the first prong in *McDonnell Douglas*, in which they must demonstrate minority status. The complainant's minority identity can be part of the discussion, as intended, rather than largely ignored as it currently is. And by shifting from professed self-identification to an intersubjective dialogue, dynamic nominalism signals employees that do not self-identify as black – at least in the context of their employment – that a claim of racial discrimination is still available to them.

The definition would also remove the cloud surrounding individual acts of discrimination and disparate treatment created by the move to disparate impact and color-blindness. By clearly marking the process by which blackness is made and made to matter for individuals, it will send notice to employers that individual acts of discrimination must be better policed, as mirroring racial demographics to avoid disparate impact will not enough to avoid charges. At the same time, the group-level process of dynamic nominalism, which is responsible for the creation and maintenance of the racial group as a whole, offers a new use and defense of the aggregated data that drive disparate impact cases.

The closest the EEOC has so far come to officially adopting a definition of identity that resembles dynamic nominalism actually deals with disability rather than race. While there are obvious differences between naming an individual as black and naming another disabled – most notably the rate at which each term is used pejoratively – the identities are sufficiently similar for the purposes of antidiscrimination law.

In deciding the first prong, whether someone fits the identity definition of an applicable class, one can be considered disabled without having a disability. The “regarded as” principle holds that if a person is regarded as someone substantially limited in a major life activity – or, in

my language, named disabled – and then treated differently based on that naming, that person can make a prima facie case of discrimination. It does not matter that the individual does not fit the definition of disabled under the Americans with Disabilities Act. While the individual's actual ability level is unchanged, the intersubjective naming has, at least in the context of this employment, created a “disabled” individual who can claim discrimination based upon this made identity.

Onwuachi-Willig and Barnes (2005) have argued that a “regarded as” principle should be extended to race, though not because they see, as I do, blackness made through this naming. Instead, their concern is primarily with non-black people experiencing race-based discrimination when their names or voices lead employers to incorrectly believe them to be undesirably black. And they fear difficulties in its translation to racial discrimination, as applying “regarded as” to race does not have statutory support in Title VII and its use as “mistakenly identified” would mean that it would apply only to white victims.

In reality, I argue, the EEOC would not even truly need to adopt a wholly new “regarded as” standard for race, only to take seriously one of the definitions it already provides. In the previously-mentioned handbook provided to other federal agencies, the EEOC explains that they consider “Perception” a sufficient component of race. The handbook states, “Employment discrimination against an individual based on a belief that the individual is a member of a particular racial group, regardless of how the individual identifies himself. Discrimination against an individual based on a perception of his or her race violates Title VII even if that perception is wrong.” Thus, the EEOC has already correctly abandoned a purely rule- or self-identification-based definition of race and racial discrimination.

More important, combining this standard with the standard of self-identification the

EEOC explicitly supports would essentially produce a very basic version of the dynamic nominalism of blackness I have defended. This ascription by an employer, in dialogue with the self-identification of an employee, to determine the race of the employee and its attendant import is very reminiscent of the intersubjective dialogue I argued makes blackness. And acts of discrimination which follow that intersubjective dialogue match the interactive racialized effects seen in dynamic nominalism. So while the EEOC has numerous definitions of race available – both socially constructed and more traditional – dynamic nominalism of blackness is certainly one of them.

In fact, in my analysis of complaint decisions, I found several examples of the EEOC and the federal appeals board employing what could easily be termed the dynamic nominalism of disability. The naming of an employee as disabled by employers and the employee's self-identification as not disabled initiated a dialogue that resulted in a determination of the employee's official disability status, and thus a disabled person or not. An illustrative example is the case of Paul E. Callahan, an employee of the United States Postal Service who began to suffer nosebleeds in his early 50s. (*Paul E. Callahan v. United States Postal Service*) His supervisors labeled him as disabled and assigned him to only light duty. Callahan, however, demanded that he was not disabled, even proffering a doctor's note as evidence. The USPS, however, continued to treat him as disabled, and Callahan filed employment discrimination claims of both age and disability with the EEOC. The analysis of the federal appeals court centered around the “regarded as” standard and whether the supervisors truly believed that the nosebleeds significantly affected a major life activity, but also said that this must be considered in the context of Callahan's claim that it did not. Self-identification and identity by ascription, they said, should essentially be brought into an intersubjective dialogue, calling for an actual

dialogue ("we find that a hearing should be held to resolve this issue") to determine disability status. This need for a public hearing in a difficult case in which self-identification and ascription might conflict is very reminiscent of the public discussion and making of Barack Obama's race as described in Chapter Two.

## CONCLUSION:

### MAKING USE OF MAKING BLACKNESS

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I finish this dissertation in a week of sharp reminders that blackness still matters. A neighborhood watch volunteer has been arrested for the shooting of an unarmed 17-year-old black male, and two white men have assassinated three black people in Tulsa, Oklahoma. Our understanding of these events, and whether they were truly race-related – or, as the defendants all claim, race was irrelevant – is shaped by our understanding of blackness. Who is black and how that matters is crucial to our ability to understand these events and to systematically attack their root causes. Hopefully, the work done here to illuminate the making of blackness can be a small help in that understanding.

I think that *Making Blackness, Making Policy* has demonstrated the benefits of an interdisciplinary approach to defining race. A key advantage to the dynamic nominalism of blackness is its alignment with the actual process of social construction. The readings of American history and African American autobiography, but especially social science research into the media's naming of Obama as black, have shown that the concept is not just theoretical. Those who with competing philosophies of race can be much more convincing by complementing anecdotes and thought experiments with systematic analysis.

While Chapters Two and Three provided examples of the intersubjective dialogue in action, we can find further examples highlighting other participants. These examinations could revolve around family, friends, classmates, and coworkers: the people with whom individuals have the most interaction, and those who are most likely to be part of the everyday intersubjective dialogue. Not everyone will garner the media attention of Barack Obama, and

interactions with the state, while stark and powerful, are not everyday events. These investigations would provide greater evidence for dynamic nominalism, while getting us closer to demonstrating the relative strength of the voices in these dialogues.

It would also be very helpful to know what shapes these dialogues. While it is the naming that matters, the choice of names and when to apply them is limited. But just what these limits are is not clear. While America's rules of blackness do not actually define race, the rules are likely the dominant constraint on the intersubjective dialogues within dynamic nominalism. But what rules are actually applied? And when? The media's discussion of Barack Obama began this discussion. It showed, for instance, that respondents to the Williams Identity Survey eschewed geographic descent, and the media paid only lip service to self-identification. McPherson and Shelby (2004) have shown the hypodescent is sometimes trumped by political concerns. And phenotype is insufficient in ambiguous cases. Understanding the actual constraints on naming, and understanding what shapes the intersubjective dialogue, can turn this largely descriptive project into a political one. The self-identification of Du Bois, Fanon and others was trumped by third-party ascription, but in what scenarios might Zack's voluntarism be possible? In what contexts does political blackness trump racial blackness? A systematic study of how and when we decide to name individuals black would contribute to our justice-friendly attempts to shape the rules of blackness.

While I believe the available evidence demonstrates the centrality of a black identity, further evidence of blackness as a hypergood could make the argument more convincing. It is not just the centrality of black identity that makes blackness a hypergood, but its vital import in existence-defining moments. If blackness is where individuals look for guidance in the most important situations, then we should see greater self-identification as black and reference to race-

based thinking in those contexts. Whether through experimental or anthropological research, we should look at these moments – those surrounding marriage, birth, choice of neighborhood, etc., when one is confronted with the question of just who they are and why that matters – and see if blackness is where they turn. Answers to the US Census, the most direct questioning of who we are by a powerful state, and the experimental set-ups employing the MMRI and MIBI, make me confident that blackness will be a crucial referent,

That discussion showed the need for a politics of recognition, but it did not provide a prescription for what this recognition might look like. That role is reserved for our democratic process. A public discussion of the ways in which to recognize my process-oriented version of blackness without prioritizing specific political or cultural forms of blackness is necessary. Possibilities include new forms of descriptive representation, a shift in how the state counts and names its citizens, or something we have yet to imagine. But the specifics should be left to the public and its representative, which the voices of black people at the center.

And certainly more can be done to see how the government's adoption of a dynamic nominalist conception of blackness would affect enforcement capacity. Greater access to deliberations currently denied to researchers, surveys of workers and employers asking how they know when their race has been made to matter, and analyses of other government agencies would all be beneficial. Simply documenting the many ways that race is defined within and across federal agencies will cause us to see that some consistent definition of blackness, whether dynamic nominalism or not, is necessary.

I hope that this dissertation has made a convincing case that dynamic nominalism is the best way to understand the making of blackness in America. If it has, philosophers, social scientists, policy makers, and the public can all take this definition and use it to better understand

the way in which race matters. And, perhaps, it will allow us in some small way to better meet the needs of black people in America.



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